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VOLUME ONE

ARMY SERVICE FORCES
SEATTLE PORT OF EMBARKATION
SEATTLE, 4, WASHINGTON .

General Court Martial
Fort Lawton Staging Area
Fort Lawton, Washington

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Proceedings of a general court-martial which convened at the Fort Lawton Staging Area, Fort Lawton, Washington, pursuant to the following order:

ARMY SERVICE FORCES
SEATTLE PORT OF EMBARKATION
SEATTLE, 4, WASHINGTON

4 November 1944

SPECIAL ORDERS)
: E-X-T-R-A-C-T
NO. 309)

1. A General Court-Martial is appointed to meet at the Fort Lawton Staging Area, Fort Lawton, Washington for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT

COL WILMAR V DEWITT 014814 GSC
COL PAXTON S CAMPBELL 05872 TC
LT COL MARTIN A FENNEL 012431 TC
LT COL GERALD W O'CONNOR 0472122 JAGD, Law Member
LT COL ANTHONY F STECHER 0117768 GSC
MAJ HECTOR J CARPENTER 0197901 CWS
MAJ MILTON S KIMBALL 0211727 TC
MAJ SAMUEL A MACLENNAN 0246930 AGD
MAJ GEORGE N CROCKER 0900081 TC
CAPT GEORGE N ATKINSON 0482416 Ord Dept
CAPT KENNETH A WELLER 0920315 TC

LT COL LEON JAWORSKI 0909207 JAGD, Trial Judge
Advocate
CAPT ROBERT BRANAND III 0924051 JAGD, Asst Trial
Judge Advocate
MAJ WILLIAM T BEEKS 0903153 JAGD, Defense Counsel
CAPT HOWARD D E NOYD 01576449 QMC, Asst Defense
Counsel

The employment of an enlisted reporter is authorized if available. If not, the employment of a civilian is authorized. AUTH: Sec 1, GO #45, WD, 5 September 1942.

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X

X

By command of Brigadier General DENSON:

F. W. TEAGUE,
Colonel, GSC,
Chief of Staff.

OFFICIAL:

W. H. Mayse
W. H. MAYSE
1st Lt., TC
Actg. Asst. Adj. Gen.

Fort Lawton Staging Area,
Fort Lawton, Washington
16 November 1944

The court met pursuant to the foregoing order at 9:00 o'clock, a.m.

PRESENT:

Colonel Wilmar W. Dewitt 014814 GSC
Colonel Paxton S. Campbell 05872 TC
Lt. Colonel Martin A. Fennell 012431 TC
Lt. Colonel Gerald W. O'Connor 0472122 JAGD, Law Member
Lt. Colonel Anthony F. Stecher 0117768 GSC
Major Hector J. Carpenter 0197901 CWS
Major Milton S. Kimball 0211727 TC
Major Samuel A. MacLennan 0246930 AGD
Major George N. Crocker 0900081 TC
Captain George N. Atkinson 0482416 Ord Dept.
Captain Kenneth A. Weller 0920315 TC

Lt. Colonel Leon Jaworski 0909207 JAGD, Trial Judge Advocate
Capt. Robert Branand III 0924051 JAGD, Asst Trial Judge Advocate

Major William T. Beeks 0903153 JAGD, Defense Counsel
Capt. Howard D. E. Noyd 01576449 QMC, Asst Defense Counsel

ABSENT:

None

The court proceeded to the trial of Tech 5 Nelson L. Alston, Pvt. Richard Barber, Pvt. Willie C. Basden, PFC. Milton D. Bratton, Tech 5 Riley L. Buckner, Cpl. Johnnie Ceaser, Pvt. James C. Chandler, Jr., Tech 5 James Coverson, Tech 5 Lee A. Dixon, Cpl. Russel L. Ellis, Sgt. Emanuel W. Ford, Pvt. Jefferson D. Green, Pfc. John L. Hamilton, Pvt. Frank Hughes, Sgt. Arthur J. Hurks, Pvt. Walter Jackson, Pvt. William G. Jones, Tech 5 Henry Jupiter, Cpl. Luther Larkin, Pvt. Loary Moore, Tech 5 Willie Prevost, Sr., Pvt. Robert Sanders, Tech 5 Freddie L. Simmons, Pvt. Elva Shelton, Pvt. Samuel Snow, Sgt. C. W. Spencer, Tech 5 Nathaniel T. Spencer, Tech 5 Leslie T. Stewart, Tech 5 Arthur L. Stone, Pvt. Richard L. Sutliff, Tech 5 Booker W. Thornton, Private Booker Townsell, Pfc. Freddie Umblance, Tech 5 David Walton, Pfc. Arthur Williams, and Pvt. Wallace A. Wooden, all of Headquarters and Headquarters Detachment # 2, Camp George Jordon, formerly of 650th Port Company, and Pvt. John R. Brown, Pfc. Sylvester Campbell, Tech 5 Willie S. Curry, S/Sgt. Ernest Graham, Tech 5 Herman Johnson, and Pfc. Roy L. Montgomery, all of Headquarters and Headquarters Detachment # 2, Camp George Jordon, formerly of 651st Port Company, and Tech 4 John S. Brown of 578th Port Company.

TRIAL JUDGE ADVOCATE: The accused are present together with the regularly appointed defense counsel and assistant defense counsel. Whom does the accused desire to introduce as their counsel?

DEFENSE: There will be none other than the regularly appointed defense counsel.

TRIAL JUDGE ADVOCATE: Does each of the accused accept as his counsel the regularly appointed defense counsel and assistant defense counsel?

DEFENSE: The accused accept the regularly appointed defense counsel, but does the trial judge advocate wish to inquire individually of each of the accused?

TRIAL JUDGE ADVOCATE: I think it would be well.

LAW MEMBER: I suggest that be done.

TRIAL JUDGE ADVOCATE: I think it would be well if each of the accused so indicated. May I, if the court please, read the name of each accused and have him rise and indicate whether he accepts the regularly appointed defense counsel in this case.

Each of the accused were then interrogated by the trial judge advocate as to whether they accepted as counsel the regularly appointed defense counsel and assistant defense counsel, and all replied in the affirmative.

Basil D. Rasmussen was sworn as reporter.

TRIAL JUDGE ADVOCATE: Do each of the accused desire a copy of the record of trial?

DEFENSE: It is my understanding you are required to make an individual copy of the record for each accused, and in view of the fact you are required to do so, yes, we will ask for a copy of the record for each accused. Otherwise, I would be willing to waive it, I believe, if you were not required to make all these copies; but, as long as you must make them, we would like a copy.

TRIAL JUDGE ADVOCATE: Well, independent of the requirement, if it is desired a copy be had, we will be glad to furnish it and it will be done.

DEFENSE: Before proceeding further, may I make one observation. As you were reading the grades of the various accused here I notice some of them now have higher grades than appears in the specifications.

TRIAL JUDGE ADVOCATE: That has been changed.

DEFENSE: It has been changed?

TRIAL JUDGE ADVOCATE: Yes, it has been changed and I read them correctly with the changes.

DEFENSE: I thought I noticed one you didn't read correctly.

TRIAL JUDGE ADVOCATE: Well, if one escaped our attention, if you would let us know we will gladly make the correction.

DEFENSE: I don't recall. I don't want to raise any technical objection over it, but I presume as we proceed if it appears there are any that are in error they can be amended to correspond to the grade they now hold.

TRIAL JUDGE ADVOCATE: That is entirely agreeable, and you may be sure if there is any error it will be corrected. However, we sought to make all corrections before this specification was read.

TRIAL JUDGE ADVOCATE: If the court please, I would like to bring in the interpreter and swear him at this stage of the proceedings.

DEFENSE: Before swearing the interpreter, Colonel Jaworski, do you have any objection to giving the defense counsel some indication of who he is and what his qualifications are?

TRIAL JUDGE ADVOCATE: No, I have no objection whatever. As a matter of fact, I would be glad, if you care to, to place him on the witness stand and let him state his qualifications. If you will accept my word for it, he is an individual who has had experience in talking the Italian language all of his life; he is a soldier in the U. S. Army; he has, and now holds, a certificate of proficiency from the U. S. Army in the translation of Italian into English and English into Italian -- an ASTP certificate.

DEFENSE: May I ask if he is attached to the Italian Service Company, any of them, that will have witnesses that are involved in this case?

TRIAL JUDGE ADVOCATE: That is correct.

DEFENSE: If the court please, I am going to object to any interpreter who is a member of one of the service organizations or the Italian Company, attached to the service company, from whom witnesses will be introduced in this case. There may be questions in interpreting English into Italian or vice versa where there is an ambiguity, and I think there may be a natural sympathy or a feeling of sympathy for the Italian Service Company members. I know there is available at least one man within this command, who is an officer and who has assisted me in the examination of some of the Italian members of this service company, who speaks fluently the Italian language. I just don't think it is fair for these accused to draw an interpreter from an organization which is interested in the result of this case, as this particular Italian Service Company must necessarily be. In making my objection, I have no doubt whatsoever but what the interpreter might try to be fair, but at the same time I think every member of the court well knows there are situations in interpreting one language over to the other where there are

ambiguities, and a feeling of sympathy toward one side or prejudice to the other might very well affect the interpretation made.

TRIAL JUDGE ADVOCATE: If it please the court, it so happens it is a function of the trial judge advocate to furnish to this court an interpreter. The prosecution has sought to select a man who has particular proficiency in interpreting. It so happens there are various dialects in the Italian language and it is a most difficult thing to find someone who would understand all these dialects. Some of these boys who will be witnesses come from a different part of Italy than others do, some speak the Sicilian dialect, and it is rather difficult to find someone who can correctly interpret all of those. However, I think that the matter can be made very simple by defense counsel having their interpreter in the court room and I will be very glad to have the officer he mentioned, whoever he might be, present at his side the entire time that this translation is made, and if any question is raised at any time as to its correctness we would be very glad to have the matter brought before the court. I cannot possibly see how there can be any objection to the use of this man as interpreter and, frankly, we made an effort to use one or two others and found that they were unable to do the work nearly as satisfactorily as this man. But with counsel having their own interpreter present, I can see no possible prejudice or possible harm that can come to them. The mere fact that this man happens to be attached to a service unit is certainly no disqualification. I would be very hard to find someone who isn't attached to an Italian service unit to use as interpreter, because obviously a man who has those qualifications is placed in that position.

DEFENSE: As I understand it, Colonel Jaworski, the interpreter whom you have selected is the interpreter attached to the 28th Italian Service Company, which is the service company involved in this case. Now at Mount Rainier at the present time, may it please the court, there are quite a number of other Italian service companies. Those all have interpreters attached to them. But here he selects a man from the company and who lives day in and day out with the men who will be witnesses in this case, and the fact counsel desires him so strongly seems to me ought to be some indication to the court there is some reason why he prefers that interpreter to others. Now I happen to know this officer down here who escorted me over to Mount Rainier at the time I interviewed these Italians had no difficulty with any of the dialects from any of the witnesses whom we interviewed or talked to. I just feel in all sincerity that it would be detrimental to the rights of these accused to take a man who mingles closely with these Italians who will be witnesses in this case -- lives with them, eats with them, sleeps with them -- and bring him in as an interpreter in this case.

TRIAL JUDGE ADVOCATE: What could be fairer, if it please the court, than to have another interpreter sitting at the side of defense counsel to check this interpreter, and there is no

basis whatever to counsel's supposition counsel is interested in this interpreter other than the fact he is a competent interpreter and that is the only thing that interests the prosecution.

LAW MEMBER: Does the suggestion of the trial judge advocate that you have an interpreter sit at the table to interpret the interpreter's testimony satisfy you?

DEFENSE: I would rather stand on the objection I have made, may it please the court.

LAW MEMBER: Well, Colonel, in view of the circumstances of this case, subject to an objection by any member of the court, I will rule that the objection is well taken.

TRIAL JUDGE ADVOCATE: If it please the court, obviously it may mean that there will be some difficulty in finding someone else. I would like for the court to do this. If there is any question, any serious question in the court's mind about either the competency or the fairness of this man, I would like to tender him to the court for an examination and let the court develop whatever it wishes on that point. If the court, of course, desires someone else, it is perfectly all right. One reason that this man was used, as I say to the court, is because there were two others tried and he was the only one found that was able to understand all the dialects.

LAW MEMBER: Well, it seems to me in fairness, and this is no reflection upon the trial judge advocate, that Seattle is a city large enough that possibly the courts in the city have experienced Italian interpreters -- I am sure that must be so -- so at the present time, subject to objection by any member of the court, it is the ruling that the trial judge advocate should attempt to get some interpreter who is not in any way connected with any organization involved here.

TRIAL JUDGE ADVOCATE: All right sir. The court may be sure that every effort will be made to procure an interpreter who has no connection with a service unit as far as that goes, and we will look into the matter and see who is available and what is available. We will dispense, for the time being, with swearing any interpreter until such time as one may be obtained.

PRESIDENT: There being no objection from the members of the court, it is so ruled.

The trial judge advocate then announced the names of the members of the court present.

TRIAL JUDGE ADVOCATE: The general nature of the charges in this case consist of a charge of rioting in violation of Article of War 89 and a charge of murder in violation of Article of War 92. The charges were preferred by Major Irvin R. Crawford. They were investigated by Major H. H. Manchester. No member of the court will be a witness for the prosecution. The records in

this case disclose no grounds for challenge. If any member of the court, however, is aware of any fact which he believes to be a ground of challenge by either side against any member, it is requested that he state such fact.

PRESIDENT: There appear to be none.

TRIAL JUDGE ADVOCATE: The prosecution has no challenges for cause.

PRESIDENT: Before you go any farther, for the record Colonel O'Connor is the law member. I don't know whether that was read.

TRIAL JUDGE ADVOCATE: The prosecution has no challenges for cause. The prosecution, however, does desire to challenge preemptorily Lt. Colonel Fennell.

PRESIDENT: Lt. Colonel Fennell will be excused.

Lt. Colonel Fennell thereupon withdrew.

TRIAL JUDGE ADVOCATE: Does the defense or does the accused desire to challenge any member of the court for cause?

DEFENSE: The defense would, if the court please, like to have each member of the court sworn to answer questions. I deem it my duty, in view of the seriousness of this case, to examine each member of the court at some length for the purpose of determining whether or not there is any possible prejudice that any member might have and of which the particular member might not be conscious. I know that if there was anything that would affect consciously your judgment, you would declare it. So often in these cases there are things which may in past experience have occurred which might unconsciously affect your judgment. I deem it, in view of the seriousness of this case and the importance of it, as my duty to attempt to ferret out any possible unconscious prejudice you might have.

PRESIDENT: You have permission to do so.

DEFENSE: Would you swear the court to answer questions, Colonel Jaworski? I would like each member sworn. They may be sworn collectively.

The members of the court were then sworn by the trial judge advocate and were examined individually by the defense counsel as to their competency to sit as a member of the court in this case.

Following the examination of each individual member of the court the defense counsel stated the defense had no challenges for cause.

TRIAL JUDGE ADVOCATE: Does the accused wish to exercise their right to one preemptory challenge against any member except the law member?

DEFENSE: Before accepting the court the defense counsel would like the opportunity of conferring with the accused in this case, and I would like the opportunity of doing that in private, if it please the court.

PRESIDENT: The court will take a brief recess. The court room will be cleared except for prisoners and defense counsel.

The court then recessed from 9:50 o'clock, a.m. to 10:00 o'clock, a.m., at which time the personnel of the court, prosecution and defense, and the accused and the reporter resumed their seats.

DEFENSE: Defense counsel, may it please the court, after conferring with the accused, will excuse Colonel Campbell.

PRESIDENT: Colonel Campbell is excused.

Colonel Campbell thereupon withdrew.

TRIAL JUDGE ADVOCATE Do the accused object to being tried by any member of the court now present?

DEFENSE: The accused do not object to being tried by any member of the court now present.

The members of the court and the personnel of the prosecution were then sworn.

The accused were then arraigned upon the following charges and specifications:

CHARGE I: Violation of the 89th Article of War.

Specification: In that Tech 5 Nelson. L. Alston, Pvt Richard Barber, Pvt. Willie C. Basden, Pfc. Milton D. Bratton, Tech 5 Riley L. Buckner, Cpl. Johnnie Ceaser, Pvt. James C. Chandler, Jr., Tech 5 James Coverson, Tech 5 Lee A. Dixon, Cpl. Russel L. Ellis, Sgt. Emanuel W. Ford, Pvt. Jefferson D. Green, Pfc. John L. Hamilton, Pvt. Frank Hughes, Sgt. Arthur J. Hurks, Pvt. Walter Jackson, Pvt. William G. Jones, Tech 5 Henry Jupiter, Cpl. Luther Larkin, Pvt. Loary M. Moore, Tech 5 Willie Prevost, Sr., Pvt. Robert Sanders, Tech 5 Freddie L. Simmons, Pvt. Elva Shelton, Pvt. Samuel Snow, Sgt. C. W. Spencer, Tech 5 Nathaniel T. Spencer, Tech 5 Leslie T. Stewart, Tech 5 Arthur L. Stone, Pvt. Richard L. Sutliff, Tech 5 Booker W. Thornton, Pvt. Booker Townsell, Pfc. Freddie Umblance, Tech 5 David Walton, Pfc. Arthur Williams, and Pvt. Wallace A. Wooden, all of Headquarters and Headquarters Detachment # 2, Camp George Jordan, formerly of 650th Port Company, and Pvt. John R. Brown, Pfc. Sylvester Campbell, Tech 5 Willie S. Curry, S/Sgt. Ernest Graham, Tech 5 Herman Johnson, and Pfc. Roy L. Montgomery, all of Headquarters Detachment # 2, Camp George Jordan, formerly of 651st Port Company, and Tech 4 John S. Brown of 578th Port Company, being garrisoned at Fort Lawton, Washington, did at Fort Lawton, Washington, on or about 14 August 1944, commit a

riot in that they, together with certain other soldiers to the number of about 75, whose names are unknown, with force and armed with knives, clubs, trench shovels, axes, stones, and other weapons, did unlawfully and riotously, and in a violent and tumultuous manner, assemble to disturb the peace of the garrison at Fort Lawton, Washington, and having so assembled, did, in the area of the 28th Italian Quartermaster Service Company, unlawfully, riotously, and in a violent and tumultuous manner, damage and break into buildings situated in said area, and did unlawfully and riotously assault members of the 28th Italian Quartermaster Service Company and soldiers of the United States Army on duty with said 28th Italian Quartermaster Service Company by cutting them with knives, striking them with clubs and other weapons, throwing stones at them, and by hanging by the neck until dead, one Guglielmo Olivotto, a member of the 28th Italian Quartermaster Service Company, to the terror and disturbance of the garrison at Fort Lawton, Washington.

CHARGE II: Violation of the 92nd Article of War.

Specification: In that Cpl. Luther Larkin, Sgt. Arthur J. Hurks, and Pvt William G. Jones, all of Headquarters and Headquarters Detachment # 2, Camp George Jordan, formerly 650th Port Company, Fort Lawton, Washington, acting jointly and in pursuance of a common intent, together with certain other persons whose names are unknown, did at Fort Lawton, Washington, on or about 14 August 1944, with malice aforethought, wilfully, deliberately, feloniously, unlawfully, and with premeditation, kill one Guglielmo Olivotto, a human being, by hanging him with a rope by the neck.

(Signature of accuser) Irving R. Crawford
IRVING R. CRAWFORD
Major, G.S.C.

A F F I D A V I T

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 27 day of October, 1944, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he has investigated the matters set forth in specifications of Charge I and Charge II, and that the same are true in fact, to the best of his knowledge and belief.

(Signature) Robert Branand
ROBERT BRANAND
Captain, J.A.G D.

1st Ind.

Headquarters Seattle Port of Embarkation, Seattle, Washington,
4 November 1944.

Referred for trial to Lt. Colonel Leon Jaworski, JAGD, Trial Judge Advocate, General court-martial appointed by paragraph 1,

Special Orders No. 309, Headquarters Seattle Port of Embarkation,
4 November 1944.

By command of Brigadier General DENSON:

A.F. Newman, Adjutant.
A F. NEWMAN
Major, T.C
Actg. Adjutant General

TRIAL JUDGE ADVOCATE: The affidavit and 1st endorsement referring the case to me for trial are apparently in proper form. The charges were served on each of the accused on the 6th day of November, 1944. I now ask the accused, and each of them, how do you plead, first to Charge I and to the specification of the Charge, and also to Charge II and to the specification of Charge II?

DEFENSE: If it please the court, the accused and each of them named in Charge I and the specification to the Charge plead not guilty to Charge I and to the specification of the Charge. The accused and each of them named in Charge II and the specification to the Charge plead not guilty to charge II and not guilty to the specification of the Charge.

TRIAL JUDGE ADVOCATE Does the defense or the court desire any portion of the Manual or other publication read?

LAW MEMBER: It is requested you read to the court the provisions of the 89th Article of War and the 92nd Article of War

The trial judge advocate then read the 89th and 92nd Articles of War.

PRESIDENT: Would you also read on page 161 the discussion of depredation or riot, and on page 162 the discussion of murder.

DEFENSE: If it please the court, before counsel reads that may I say I do want to urge a motion for a continuance in this case. I am perfectly willing to request it after the trial judge advocate has finished reading the matters the court has called for, but by his proceeding I don't want to in any way waive my rights in that respect.

LAW MEMBER: That right will be preserved.

The trial judge advocate then read paragraph 147 c., pages 161 and 162, and paragraph 148 a., pages 162, 163, and 164 of the Manual for Courts-Martial, U. S. Army.

DEFENSE: Defense at this time, if the court please, is asking for a further continuance in this matter. As Colonel Jaworski very accurately stated, the charges in this case were served upon the accused the 6th of November. I have had 10 days

to adequately prepare -- well, actually 9 days to prepare from the time the charges were served on the defense and to interview witnesses for 43 men. I have been busy all of the time. I have interviewed over 100 people, --132, to be exact. I just haven't had time, even though I have employed all the diligence within my power, to properly prepare and to thoroughly investigate and confer with my clients. Some I had to interview before charges were even served and before making an investigation, and I haven't had the opportunity of conferring with them further. I don't want to unduly delay the case, and if the defense will be given a continuance until Monday of next week we will endeavor to complete all matters that we can and be ready for trial at that time.

LAW MEMBER: Major, the court appreciates the tasks to which you have been assigned, and if there is no objection on the part of the trial judge advocate, and subject to --

TRIAL JUDGE ADVOCATE: If it please the court, there is no objection to granting the defense a continuance of a few days. I do feel that counsel will agree with me that he has not been restricted as to his preparation since the charges themselves were filed.

DEFENSE: On the contrary I have received every cooperation.

TRIAL JUDGE ADVOCATE: And for several days prior to that time copies of the charges and specifications were supplied to counsel, but I have no objection to it. It means that there will be a delay from today until next Monday. I should apprise the court I do have here in attendance witnesses who have been brought from distant places; but in view of the fact it is only a matter of some three or four days, and I know that counsel is sincere in his request and I know will be ready next Monday, I offer no protest.

DEFENSE: Thank you, Colonel. I just want to make this clear that I don't mean I am not prepared to go to trial by reason of any lack of cooperation or obstacles that have been thrown in my road. As a matter of fact, from the Commanding General on down, including Colonel Jaworski and Capt. Branand, they have given me the fullest cooperation. It is just the magnitude of the task which causes my not being ready to proceed further at this time.

TRIAL JUDGE ADVOCATE: Before the court rules on the matter, if this continuance is granted as requested there is one additional matter before the court adjourns which I think we can settle at this time, and it would be very well to have it settled before Monday and I think you will find no objection to it. I just want to apprise the court I prefer there not be an adjournment until

LAW MEMBER: I suggest at this time you go forward with the matter you have.

TRIAL JUDGE ADVOCATE If it please the court, this morning a question was raised and a ruling by the court in the use of an interpreter, and it was called to my attention that there is present at this court an officer who is available and who has, as I understand it, come here rather recently. The first time I ever met him was today after the court had ruled on this matter. He is an officer, though whom I am assured speaks all Italian dialects and is worthy and well qualified to serve as an interpreter in this case. I want the defense, and I am as sincere in this statement as I can possibly be and as sincere as I have ever been in any statement, I want the defense to be thoroughly satisfied with the translations and the interpretations in this case, to the point where I am willing for them to have an interpreter of their own present in the court room in addition to whatever interpreter this court eventually accepts as the official interpreter, and I prefer that if there is at anytime any question in the interpretation that counsel through his advisor speak up so that the matter can be ironed out immediately. If that is done, I suggest that both sides let the prosecution and the defense both have seated at their table a personal interpreter to advise them in the event any question should arise. I am trying to present on this matter as fair an arrangement as I know how, and I would be very glad for the defense counsel to have available someone whom perhaps he has used before and in whom he has confidence. I would be glad to avail myself of the same thing, let both sides have someone to personally advise them, and I would like to offer at this time to the court the officer I have in mind so that he may be examined by the court and by defense counsel as to his qualifications. The reason I ask that it be done at this time is because obviously should he not be accepted, if I were to introduce him Monday morning, it would mean a further delay, it would mean I would have to try to find someone else, and I will need him immediately upon the introduction of evidence, so may I introduce him to the court.

LAW MEMBER: Have you taken this matter up with Major Books?

TRIAL JUDGE ADVOCATE: I haven't had a chance to talk to him about it.

DEFENSE: May we not confer after we adjourn here and I am certain Colonel Jaworski and I will have no difficulty about an interpreter. I just didn't feel a man attached to the Italian Service Unit should be the interpreter.

LAW MEMBER: Would it be possible to have just a short recess and you and the trial judge advocate go outside and meet the officer and examine him privately, and possibly you would come in and consent to his being used.

DEFENSE: I am perfectly agreeable to that.

The trial judge advocate, assistant trial judge advocate, defense counsel and assistant defense counsel withdrew from the court room, and upon returning defense counsel stated the defense was raising no objection to the individual now offered as an interpreter.

2nd Lieutenant Joseph P. Schepis was sworn as interpreter.

DEFENSE: I have one further matter I might take up with the court at this time. The defense is going to ask the court prior to the taking of any testimony in this case to view the premises of the colored area, the Italian area where this altercation took place, and it may be that the court will want to see the premises in daylight. I don't know. The accused, the defense, rather, are going to ask that the court view these premises at night, after sunset, when it is dark. There is going to be some complication to that because I am advised and I understand that on August 14, the night of the time in question, there was not a single street light in the area. Since that time there have been a considerable number of street lights installed, so it is going to involve, a view of the premises will involve, some arrangements being made with the post engineer to extinguish the lights now in the area and which were nonexistent at the time involved in this case. I think perhaps Colonel Jaworski and I can agree upon which lights were involved, and which should be extinguished and make the necessary arrangements, but I think the court should for its own information, in order to properly understand the testimony and before testimony is taken, see these premises and see the actual conditions as near as we can now make them identical to what they were on the evening in question.

TRIAL JUDGE ADVOCATE: If it please the court, the matter just raised is one that is wholly discretionary with the court. Obviously the prosecution has no objection whatsoever to the court viewing the premises at anytime that the court wishes to view them. I do feel impelled to point out to the court that there are some decisions by the Judge Advocate General relating to that question and great care must be exercised in view of those decisions in the manner that the premises are viewed and the procedure that is followed. In the event the court should exercise its discretion to view the premises, there can be no testimony taken and no questions asked at the sight of these matters. The court should go in a body and not individually and should view the premises without comment or remark; the record should show that the court went there and that no testimony was taken. It has been held by the Judge Advocate General that it is grossly irregular for any type of testimony to be taken. It has further been held that is usually reversible error for that to be done. I am merely pointing that out, because I know that while the law member is conversant with it anyway, I do feel it is my duty to mention those matters should the court decide to view the premises. I make this additional suggestion. If the court should decide to do so, it is not necessary by any means that the court exercise that discretion at the outset of the trial. It may be the court would prefer to hear some testimony before viewing the premises. I can easily understand, easily see, wherein the court might feel much better informed and gain much more benefit from viewing the premises after hearing some testimony than prior to that time, because the court hardly knows what to expect. The court doesn't know the nature and the character of the proof, nor what it will relate to. The court will simply blindly go out there and look around and will not know whether it is observing that which

become the issue in the case eventually, so I suggest the court in its discretion might well want to defer that matter. The prosecution, without preempting the matter in any sense, feels the court actually would gain more benefit from it after hearing the testimony and knowing what the issues are.

LAW MEMBER: Have you pictures of all this area?

TRIAL JUDGE ADVOCATE: We have pictures and maps of everything we believe is material in the case. There has been a lot of photographs taken and a number of maps made. There are one or two things that counsel may be interested in in addition to what the maps disclose. He has already mentioned those to me and I have told him I would be glad to stipulate with respect to those matters. (To defense counsel) I am entirely agreeable to the things you have mentioned to me.

DEFENSE: You so advised me.

TRIAL JUDGE ADVOCATE: We will be in a position to bring before the court photographs, as well as the maps that relate to the area, but even in addition to that, if it please the court, I want it thoroughly understood we have no objection to a view of the premises

LAW MEMBER: In addition to what you state, the danger of viewing the premises of course the accused must all be present too. Subject to objection by any member of the court, the matter of viewing the premises is to be deferred.

PRESIDENT: There being no objection, the ruling will stand.

DEFENSE: Does the court mean it is ruling upon whether or not the premises will be viewed or deferred to a later date?

LAW MEMBER: That is correct. Whether to do it at a later date or do it at all. It is all deferred. I believe, I don't intend to speak for the court, but I believe it would be better if we had some idea of some of the evidence before the view was made.

DEFENSE: I just want the court to have this thought, if I may say so. One of the main and great issues in this case is going to be that of identification, and the defense will not feel that they had a completely fair trial in this case if the court does not see the premises involved down here at night-time when the buildings are substantially and the area is substantially in the same condition with respect to light as they were on this evening.

LAW MEMBER: I feel sure that if you feel that is a very important part of your defense that this court will view the premises at sometime in the future under conditions which would fairly compare with the conditions as existed on the night of the 14th of August, and I am sure that the court and members thereof will accede to your request.

DEFENSE: And the defense may renew the motion at a later date.

LAW MEMBER: That is correct.

DEFENSE: I take it we may adjourn at this time?

LAW MEMBER: Subject to objection of any member of the Court, the Court grants the defense motion for a continuance until Monday morning at 9:00. I believe that is the 20th.

TRIAL JUDGE ADVOCATE: That is correct, sir. It is the 20th.

PRESIDENT: There being no objection, the motion is granted. The Court will convene sharply at 9:00. We would like to be ready to start at 9:00 sharp, Monday morning, and every morning thereafter.

TRIAL JUDGE ADVOCATE: It will be done, sir.

PRESIDENT: With respect to noon recess, we will take a noon recess every day at the request of the Provost Marshal at 12:00 until 1:30, instead of 12:00 until 1:00, in order to permit the accused to get their noon meal and get back here without undue rushing of their noon meal and conditions which exist in transporting them. The court is again cautioned not to discuss this case at any time with anybody. You are not to read any newspaper articles or any other articles which should be printed regarding this case. This warning will be in effect during the entire course of the trial. Now, in adjourning the Court, or in having recesses or in closing the Court, we desire that when the Court is closed that the accused move out first before any spectators or any other personnel move out. This is in order to prevent congestions in the hallways and to permit a more orderly withdrawal. The Court will adjourn until 9:00, Monday morning.

TRIAL JUDGE ADVOCATE: May I take one matter up, sir; the matter of the exit of the accused. In connection with any vote that the Court might take or anything that the Court might consider in closed session, there is a provision that requires the Trial Judge Advocate and the other personnel, Assistant Trial Judge Advocate and the others, to leave the court room before the accused leave it, that being so that there can be no communication between the Court and them prior to the time the accused leave the court room. If the Court's intention as to the manner of leaving the court room is also to be applicable in those cases, then I would like to have an agreement with Counsel that that is satisfactory.

PRESIDENT: We will make that exception; that the personnel of the prosecution will leave the court room before the other personnel

TRIAL JUDGE ADVOCATE: And one other matter--

DEFENSE: I want the Court to understand as far as the defense is concerned it has no objection to order--the prosecution remaining or leaving.

PRESIDENT: That is understood. We want to keep it as clear as we can all the way through

TRIAL JUDGE ADVOCATE: The prosecution has for the benefit of the Court a copy of the charges and specifications. They may be passed to the Court at this time or may be laid before the Court prior to convening on Monday morning, as the Court wishes. We have a few minor changes that relate to the present rank of some of the accused. These changes were made on the copy I read to the Court but have not been made in all of these copies. I wish to abide by the Court's wishes. If the Court wishes to have a copy at this time, they may be passed to the Court; if not, I will have them available for the Court prior to convening of the Court on Monday morning.

PRESIDENT: The court would rather have them on Monday morning. The Court will adjourn until 9:00, Monday morning.

The Court then, at 10:50 o'clock a.m., on 16 November 1944, adjourned until 9:00 o'clock a.m., 20 November 1944.

LEON JAWORSKI
Lt. Colonel, J.A.G.D.
Trial Judge Advocate

Fort Lawton Staging . roa
Fort Lawton, Washington
November 20, 1944

The court met, pursuant to adjournment at 9:00 o'clock a.m., all of the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present.

The accused, reporter, and interpreter, were all present.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the court.

TRIAL JUDGE ADVOCATE: Let him call the roll.

DEFENSE: If the Court please, I am going to object to this procedure until the court is all here.

President: All right. All right, you will be seated.

Trial Judge Advocate: The Prosecution is ready sir.

Defense: Defense is ready, sir.

President: Court will come to order.

Defense: May I present the objection I started to present a moment ago, if the court please. I am going to object to the taking of a call of the roll of these accused before the Court. I think it violates the constitutional rights of these men to require them to answer any questions concerning their identities before this Court. There is no reason for the Prosecution to satisfy themselves that all of the accused are present. There isn't any question but that the matter of identification or identity is one of the major issues before this court in the Defense's case, and to require one of these accused to speak up before this Court and identify himself repeatedly is, in my opinion, a violation of his constitutional rights.

Law Member: Subject to objection by any member of the court, your objection is overruled and the accused will merely state "present" when his name is called. The Court must be assured after every recess that all of the accused are present.

Defense: May I, at this time, before the roll is taken, make another motion. At this time I am going to ask that the rule be invoked that all witnesses will be excluded from the court room. I am going to further ask that five colored witnesses that the Prosecution is going to have testify, I am going to ask that every time one of these witnesses are called they be segregated and separated from each of the other of the colored witnesses. The ones to whom I refer are Sims, Battle, Ellis, Clarke,--- do you mind telling me the name of the other one?

Trial Judge Advocate: Do you mean Daymond?

Defense: And Daymond.

Trial Judge Advocate: If it please the Court, of course that is a very premature matter that Counsel is bringing up now. I don't know what Counsel has in mind at this time. But when it does become appropriate I believe we can thresh it out at that time. I don't think Counsel should dictate to this Court on how these witnesses shall be confined, or if witnesses, after testifying, --it appears that some such very unusual procedure as has been suggested by Counsel should be followed, then the Court can pass on it as to whether they wish to segregate these witnesses.

Defense: I think that is a matter for the Court's sound discretion and as far as Counsel accusing me of some segregating or secreting of these witnesses, I'm,--

Trial Judge Advocate: (Interposing) No, I didn't,--

Law Member (Interposing) Just a moment. The Court is not paying any attention to such remarks.

President: You might let the Counsel argue the matter.

Defense: I am sorry for that remark.

President: The Court will not consider such a remark, or not consider such remarks from either side. The question is one for the Law Member to decide.

Law Member: Subject to objection by any member of the court, while any one of the witnesses are testifying, the other witnesses will not be in the court room.

Defense: The Court is refusing to exclude all witnesses? I am asking that all possible witnesses shall be excluded from the court room.

Trial Judge Advocate. We would object to that. That matter can be taken care of if need arises.

Defense: My second request was that after the witness has testified that he be segregated from other witnesses that have not testified.

President: Have you any suggestions as how that should be done?

Law Member: You mean that after a witness has testified he should be taken off his military duty and confined until the testimony is over? Just what do you mean?

Defense: My information is that these witnesses have not been on military duty for some time anyway. I am merely asking that the defense be given the same consideration as the Prosecution is given.

Trial Judge Advocate: If it please the Court, these witnesses are actually not confined, but for security reasons, they have had to be kept segregated and somewhat confined, and that was a matter that was discussed with the Convening Authority's decision. They are merely kept separate from the others for security reasons. And it is a matter I explained to Defense Counsel previously.

Defense: It is not a matter which, --

President: (Interposing) Well, you want to keep on doing what has been being done?

Defense: No, I don't think, or I don't want one or two witnesses being in a position so he can go back and tell the other witnesses what he has testified and what has been going on, and so forth. That is what I mean.

Trial Judge Advocate: Then you would have to do that with every witness. You would have to say that every one of them has to be kept separate and apart from the others. You cannot just select five men and say you have to be kept separate and apart.

Defense: I don't see why you can't. There is no reason why you cannot.

President: Well, would you make a suggestion, Major, as to what you would like?

Defense: Well, I don't know the mechanics of it. I cannot advise the Court on that. The Provost Marshal should be able to work something out I think. After each one of these witnesses has testified I would like to have him kept, say at Fort Lawton, say if the others are kept someplace else. I don't care where they are kept, as long as they are away from the others and not in the presence of those that have not testified.

Trial Judge Advocate: They are not in the custody of the Provost Marshall at Fort Lawton.

Defense: I don't know where they are being kept or where they can be kept, but I know they can be kept somewhere.

Trial Judge Advocate: These men are kept under a charge of General Denson because it has been thought necessary.

Defense: Well, I'm not talking about what has been done but I am asking for a similar procedure to be followed in the future as it has been done before.

Trial Judge Advocate: Every single witness, if the Court wishes, the court has the right to tell every single witness that his testimony shall not be discussed with any other witness or person upon his leaving the court room. That is a perfectly proper instruction, and I presume the Court

may decide to give that instruction to these several witnesses that may testify, and that is as far as you can go or need to go. Otherwise you would be discriminating against these five men and saying "We are putting an additional burden on you that we are not putting on these other witnesses." You just can't do that.

Defense: Well, Counsel argues that you can't do it. But it is just a procedural matter.

President: For security reasons I will rule that the witnesses will be kept afterwards, after giving their testimony, the same as they have been kept before their testimony.

Defense: Will the Court instruct the witness he is not to discuss his testimony with any other witness?

Law Member: We certainly shall, Counsel.

Defense: I have a further question. At this time I would like to serve prosecution with a list of witnesses which the Defense will request to be called and that, I would advise the Court is not a complete list. I just have not had the time yet to get out a complete list and I have furnished Counsel with the list I have served on him. And as soon as time permits I shall serve him the complete list.

Law Member: Now just a minute. The President calls my attention to the fact that I have not ruled on the witnesses being excluded from the court room. They will be, during the testimony of any other witnesses.

Defense: Well, I haven't any objections on the others and on any subsequent matters I will take it up. I would like very much to accommodate the witnesses but after thinking the matter over I don't think I can make an exception.

Trial Judge Advocate: If the Court please, at this time, I have a function to perform. We have a reporter that has not been sworn yet. May it be stipulated, Counsel, the record so far is acceptable.

Defense: Oh, absolutely

Trial Judge Advocate: I will swear him at this time.

Defense: That's perfectly all right.

Trial Judge Advocate: Mr. Stoddard, will you rise and be sworn, please?

(E.E. Stoddard was then sworn as Court Reporter.)

Trial Judge Advocate: All right; and I understand you accept the record as made this far?

Defense: Oh, absolutely.

Trial Judge Advocate: Thank you

Defense: Now just a moment. I think there are still some witnesses in the court room and that was what my objection was, that this proceeding shall not be engaged in while any witnesses are still in the court room.

President: Will the Prosecution determine what witnesses there are in the court room and have them removed.

Trial Judge Advocate: Let the record show that each of the accused are present, that all members of the court are present as well as the personnel representing the accused and the personnel representing the prosecution.

The Prosecution does not wish at this time to make an opening statement, but does wish to call to the Board's attention that there has been prepared for the benefit of the Board a pamphlet or a tablet that will be distributed in a few moments by Capt. Branand. This pamphlet has been arranged to where there is an alphabetical index at the beginning. The names of the accused appear alphabetically throughout the tablet with two being listed on each page. In this manner the Court will be enabled to, by turning to the index and see what page the particular accused is, jot down any notes that pertain to that particular accused as the testimony develops, and we hope it will be of some value and some benefit to the Court, and I will ask Capt. Branand to pass those out at this time. Now along with this tablet there are also being passed to the members of the court replicas of maps. These maps have not yet been introduced into evidence but they will be covered by stipulation by Counsel. I will ask the Court however not to look at these little maps until the maps, the large maps, have been introduced into evidence. So with the Court's permission I will pass those out.

President: Any objection?

Defense: I don't know, if the Court please I have not seen the pamphlet or maps.

Trial Judge Advocate: There is nothing on there but the names of the accused.

Defense: Well that may be, but I have not had the opportunity of seeing them. (Perusing paper.) I don't see any maps.

Trial Judge Advocate: Well we will give you copies of the maps.

Defense: Yes. But, -- those are the same maps?

Trial Judge Advocate: Yes.

Defense: I have no objection. As a matter of fact, I think it is very helpful to the Court. (Assistant Judge Advocate distributes the papers to the Court.) Due to the fact that those are the same maps we agreed on, I have no objection

to the Court looking at them at this time

Trial Judge Advocate: All right. If it please the Court, subject to acceptance by the court, I offer in evidence a stipulation entered into between the Prosecution and the Defense relating to evidence of the accused, who are named in the charges, as being in the military service of the United States at the time that the offenses charged occurred, and being in the military service also at this time. I would like to offer that stipulation.

Defense: Yes. There is no objection. It is so stipulated.

Law Member: Have you taken the matter up with each member of the accused? Have they agreed to that?

Defense: I have not taken it up with each member or each one of the accused, but on their behalf I am agreeing to it, if the Court please. I am not aware of the necessity of taking it up with every one of the accused

Law Member: Subject to there being objection by any member of the Court they will be received.

President: There appear to be no objections.

Trial Judge Advocate: I will have this marked Prosecution's exhibit 1.

(The stipulation was marked Prosecution's Exhibit 1 and received in evidence. Read to the Court by the Trial Judge Advocate.)

Trial Judge Advocate: If it please the Court, there is another stipulation relating to the use of some maps and Defense Counsel and I have agreed to the maps that will be presented correctly representing the physical facts as they existed on the evening that this matter occurred. Subject to acceptance by Court, I offer in evidence this stipulation that related to the use of these maps. The nature of the stipulation being that they correctly reflect the physical facts as they appeared on the morning of August 15, 1944. And then there is another part to that stipulation to the effect that the period of time mentioned,--at the period of time mentioned in the preceding paragraph, which is August 14 and August 15, there were no street overhead lights and street lights other than lights affixed to the buildings in the area shown in Exhibits A and B, and Exhibits A and B are being referred to now in the stipulation.

Defense: I believe that is right.

Law Member: There are three maps. Are they going to be marked Prosecution's Exhibits 2, 3, and 4?

Trial Judge Advocate: Yes, sir.

Law Member: Subject to any objection by any member of the Court, the maps will be marked and received as Prosecu-

tion's Exhibits 2, 3 and 4.

Defense: The stipulation includes the fact there were no street lights?

Trial Judge Advocate: Other than those affixed to the buildings.

Defense: Yes. And I think the legend so indicated on the maps. But it may be the court has seen that area recently and there are quite a number of lights down there now, of course.

Trial Judge Advocate: If it please the Court, I don't think that latter remark should be made, and it probably should not be in the record. It is in the nature of evidence.

Defense: All right.

Law Member: It is distinctly understood by the Court that these maps represent the facts as they were on August 14 and 15, 1944.

Defense: If Counsel pleases, I am perfectly willing to have that remark withdrawn from the record. Of course it is understood the maps do not portray every physical condition down there.

Trial Judge Advocate: Yes, as far as the maps are concerned, there may be some trees or something.

(Three maps were marked Prosecution's Exhibits 2, 3 and 4 and received in evidence.)

Law Member: Would you tell us which is Prosecution's Exhibits 2, 3 and 4, and would you tell us which is which?

Trial Judge Advocate: Yes, sir. The map you have includes the large area. (Indicating) Each member of the Court has three separate and distinct small maps; you are supposed to each have three.

Law Member: Yes.

Trial Judge Advocate: This is the stipulation, the Court admitted this one.

(Document was marked Prosecution's Exhibit 5 and received in evidence.)

Trial Judge Advocate: If it please the Court, the Prosecution feels that the evidence against one of the accused in this case is of such a nature and is such as not to warrant the further pressing of charges against that accused. And the Prosecution has, the last two or three days, gone into the matter fully and feels there is such doubt of the guilt of this accused to where it wishes to dismiss the charges against the accused John R. Brown. There are two accused named Brown, so

let us not get them confused. The one to whom I have reference is Private John R. Brown; Private John R. Brown. And I have received permission from the Convening Authority to dismiss the charges against the accused John R. Brown and pursuant and due to the direction of the Convening Authority I now dismiss the accused John R. Brown.

Defense: In view of the announcement by Counsel, you may strike off the list I have given you of Defense witnesses and that I have served upon you, namely, --

Trial Judge Advocate: (Interposing) Well just a moment. Pardon me. Suppose we get together on that.

President: Private John R. Brown?

Private John R. Brown: Yes, sir.

President: Will you stand up and come over here?

(John R. Brown rises and stands before the Court.)

President: The Prosecution has withdrawn the charges against you and you are no longer under trial in this case. You will be reported back to the guardhouse and at a later date assigned your proper duties. You are dismissed.

Private John R. Brown: Thank you, sir.

Defense: I think, if the Court please, I might want to call this witness later. There is a possibility I may.

President: Well, he will be held there then, and the Provost Marshal will take charge.

Defense: Will you have that in mind, I may want him as a witness later?

Trial Judge Advocate: Yes. The Prosecution calls as its first witness Corporal Major Guiseppi Belle.

(Corporal Major Guiseppi Belle, 28th Italian Quartermaster Service Company, a witness for the Prosecution, was sworn and testified through the interpreter as follows:)

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name, please.

A Belle, Guiseppi.

Q Now you interpret whatever he says.

Law Member: What is his first name?

Interpreter: Guiseppi is his first name, and Belle is his second.

Defense: I think there should be some showing the witness

does not understand English. Some do and some don't, I understand. If they understand English I think there should be some showing.

President: Corporal, do you understand English?

The Witness: No.

Trial Judge Advocate: I can assure the Court of one thing and that is each of the witnesses I intend to use do not understand the English language well enough to be able to talk in the English language. I have not been able to talk to a single one of them myself, but if I do find one that is able to speak English I would be glad to let him testify.

Defense: I am satisfied.

President: Well ask him a few questions, and let us get on with this.

Q What is your organization?

A 28th Italian Service Company.

Q And how long have you been with the 28th Italian Service Company?

A Six or five months.

Q Where are you stationed at the present time?

A Mt. Rainier.

Q At the ordnance plant at Mt. Rainier?

A Yes.

Q Did you have an experience on the night of August 14, 1944 of an unusual nature? Answer that yes or no.

A Yes.

Q Were you alone or were any other persons with you at that time?

A There were two others with me.

Q Who are the others that you refer to; were they also Italians?

A Yes.

Q What were the three of you doing?

A We were coming back from town and we were going in to the Company talking about our own affairs.

Trial Judge Advocate: I am sorry, Major, but we are going to have to stand on this side while the witness testifies.

Law Member: I suggest we move the witness and the interpreter up and you all come up so we will all be together here.

Q Were you at that time walking along a road?

A Yes.

Q What road was it?

A The street that goes directly to his barracks.

Q Does that street lead to any particular area?

A Exclusively to our barracks.

Q When you use the expression "our barracks" what do you mean?

A Our camp.

Q And by "our" who do you mean, the Italians?

A Yes.

Q Now in what barracks did you live, give the number.

A 710.

Q This has been agreed to as a map that shows that area. (Indicating) And this has been designated as Barracks 710. (Indicating)

A Yes.

Q Now will you point out on this map the direction in which you were walking?

A (Indicating) He believes it was that road.

Law Member: Well now, "that road" doesn't mean anything.

Q Yes, that is correct. The road that he mentioned is marked Lawton on the map. As you and the other two Italian soldiers were walking on the road that is marked as Lawton Road, did you see anyone standing close-by?

A Yes, they were coming towards them. Four negroes, four colored people.

Q Were they soldiers?

A Yes.

Q Did any of them say anything?

A They didn't make any direct remarks to us at that time.

However they were saying,--

Defense: (Interposing) Now if the Court please, that answers the question sufficiently.

Q All right, What, after that time, was said by any of them?

Defense: Now if the Court please, I am objecting to that question until and unless Counsel intends to connect it up with one of the accused here. Otherwise it is purely a violation of the hearsay rule.

Law Member: Objection overruled.

Trial Judge Advocate: Would you please read the question back?

(Question read back.)

The Interpreter: Shall I say it?

Trial Judge Advocate: Yes, it is necessary for you to interpret it just as he is saying it.

A God damn Italian son-of-a-bitch shit

Defense: Now if the Court please, --

Law Member: (Interposing) Just a minute. Let us get that answer.

Interpreter: He said, "God damn Italian son-of-a-bitch shit."

Defense: Now I move to strike the answer, if the Court please, because he asked him what any of them said, and he said what they said. The answer is not responsive and I think Counsel is bound to bring out now whether they yelled it all in a chorus or whether just one said it.

Trial Judge Advocate: I can do that in the question.

Q Did one of these negro soldiers say that or more than one?

A They were talking among themselves.

Defense: All right. Now if the Court please, I wish to renew my motion to strike it. It is now clearly indicated by the witness' own testimony it was not directed to them but a general conversation that was being held among themselves.

Law Member: The motion is denied.

Q Did anything happen after that remark was made?

A Yes. We continued on the road together, directly to our

own barracks.

Q And did anything happen after that?

A After we had walked about fifteen feet one of them shouted, "Hey, Italian."

Defense: Now may it please the Court, may it be understood that my objection runs to all these statements because they are hearsay, unless it is going to be connected up with one of the accused

Law Member: We assume they are going to be connected up. Your objection may run.

Defense: I assume it will be connected up also.

Trial Judge Advocate: If the Court please, they will be connected up. It is a general statement I believe. In fact, the Prosecution can assure the Court that will be done and aside from that this is all a part of the res gestae, of course.

Q Then what happened?

A After I heard the words, "Hey, Italian," I turned around in the direction,--in this direction. (Indicating) Then they came running towards me.

Q Well, then what happened?

A After I turned around and I saw them coming, they came to a little distance away from me, at which time I saw one of them with a knife in his hand, at which time I let go with my left hand and punched him.

Q How was he carrying the knife?

A He had the knife like this. (Indicating) And I saw the knife because of the street light which was reflecting on the blade.

Law Member: Now "Like this" doesn't mean anything. Will you have him describe that please?

Q Will you tell just how the knife was held?

A He says he held the knife like this. (Indicating)

Trial Judge Advocate: Well, may it be stipulated he shows it was held by him in his right hand at his side.

Defense: That is the interpretation the interpreter has given us.

Q All right. Now you say you punched him. With which arm did you strike him?

A Left.

Q Did you double up your hand into a fist?

A With his fist, like this. (Indicating)

Q And what part of his body did you strike?

A On his face here, (Indicating).

Law Member: Pointing to the right side of the jaw, is that correct Major?

Defense: Yes, that is correct.

Q Did he fall to the ground?

A Yes.

Q Then what did you do?

A I immediately ran towards my barracks because as soon as I saw those negroes coming towards me I ran away towards my barracks

Q Now when you refer to those other negro soldiers, do you mean the other three that you have told the Court about?

A Yes.

Q I believe you have testified you stayed in barracks 710; was that the barracks to which you ran?

A Yes. Yes, directly to my barracks.

Q After you reached your barracks what did you do?

A I got undressed, because I was tired from the day that I spent in town. Therefore I got undressed.

Q Did you go to bed?

A Yes.

Q Did you thereafter hear any noise in the Italian area?

A Yes.

Q About how long after you went to bed did you hear this noise?

A About fifteen to twenty minutes.

Q Describe to the Court the noise that you heard.

A I heard stones coming from all directions.

Q And against what were these rocks or stones thrown?

A Against Barracks 708.

Q Were any rocks thrown against Barracks 710, the barracks in which you stayed?

Defense: If the Court please now, I have been very lenient with Counsel and I think it is time the witness does the testifying. Counsel puts the question in a very leading form so that all the witness has to do is to agree with what he is saying.

Law Member: Will you reframe your question?

Trial Judge Advocate: The last one was a little leading, I agree, but the others were not, if the Court please.

Q Will you state whether there were any rocks thrown against any other barracks than 708?

A Is that 708?

Q Other than 708?

A Yes. Even after there were rocks, rocks came into my own barracks this size. (Indicating)

Law Member: And how big is that?

Q Will you step over here and see if you can pick out a rock of about the size that came into your barracks?

A I am not sure this is the one (Indicating to a rock) but in that specie of rock.

Q Was it that type of rock?

A Yes, like this. (Indicating)

Trial Judge Advocate: All right, I offer it in evidence.

Defense: I assume it is being offered for illustrative purposes only.

Trial Judge Advocate: That is right. I will withdraw it later on, after it has served that purpose.

Defense: No objection to having it for that purpose.

Law Member: It may be received for that purpose.

Trial Judge Advocate: I will ask that it be withdrawn after this.

Law Member: Let us get some dimensions and put that in the record.

Trial Judge Advocate: Can we stipulate on the weight and

the size?

Defense: I wouldn't attempt to stipulate on the weight, but there is a ruler here if you want to measure it.

Trial Judge Advocate: Seven and a quarter inches long, three and a half inches thick and five and a half inches wide.

Law Member: All right. It may be received. I think that should be marked and received as Exhibit 6.

Trial Judge Advocate: Yes, I think it should be received.

Law Member: All right.

(The rock described was then marked and received in evidence as Prosecution's Exhibit 6.)

Q All right. Now was any effort made, -- no, strike that question. Did you have occasion to observe the people who were in the area and throwing these rocks, I don't mean identify any particular one, but I mean their class?

A There were many people,--

Defense: (Interposing) Now just a moment. I submit if the Court please that that question calls for a yes or no answer, and I don't want to be too technical, but to give me a chance for objection later I think the interpreter should be instructed to answer it directly.

Law Member: Would you read that question, please?

(Last question read back.)

Law Member: Yes; that calls for a yes or no answer

Q Did he, or didn't he?

The Interpreter: I will ask the question again. Would you repeat it for me again?

(Question reread.)

Q Answer that question yes or no.

A Yes.

Q All right, tell us who they were.

A They were negroes.

Q Soldiers or civilians?

A Soldiers.

Q Did any of those negro soldiers make an effort to enter Barracks 710?

A No, --

Defense: (Interposing) I submit it has been answered, if the Court please. The question was did they make an attempt and he said no, and that is the answer.

Law Member: It took him an awful long time to say that

Defense: If Counsel would only instruct him to answer yes or no in the text of the questions this could be avoided.

Law Member: No look, Major, you in your past career as an attorney have examined witnesses through an interpreter and you know that at the very best it is always a very difficult situation. Now let us move along and if there is anything unsatisfactory I will entertain a motion to strike it out. Now what is the answer.

A Inside the barracks, no. However, when we saw this mass of people coming at us from every direction, all different directions, we placed our bunks against the doors. And while we were placing the bunks against the doors there came two chops with axes, first one,--

Defense: (Interposing) Now you see, if the Court please, he is just going on and on here and I don't have the proper chance to make an objection or anything.

Trial Judge Advocate: I think it is a proper answer and if there is any portion of it you want to object to you can.

Law Member: Just answer yes or no.

Trial Judge Advocate: I don't see how he can do it, if the Court please. If you want it broken down piece by piece I will try to please you.

Defense: Well I don't want to cause any hardship, but I don't know what is coming unless I know what the question is proceeding it. I don't have any specific answer to object to.

Law Member: Well, now let us see what we have got. He said when we saw the crowd coming they placed bunks against the doors. Now, let's strike out everything from there on and proceed, Counsel.

Q After you placed your bunks against the door, what if anything did you see?

A I saw the axe entering through the door.

Q What if anything else happened?

A After they pulled the axe back, then they hit the door with another blow.

Q All right, proceed. What happened after that, if anything?

A Then they did not enter the barracks, they went away. They had no intention of entering the barracks, because the lights in the barracks were all out.

Q All right. Did you, from your barracks, No. 710, have occasion to observe this orderly room, Room 713?

A Yes, I could see.

Q What if anything did you see go on there?

A After I, -- I looked through the window, after I felt the mass of people were going away from my barracks, I looked towards the orderly room and I saw negroes going toward the orderly room with axes and clubs.

Q Did you see whether or not any of them entered this orderly room, 713?

A No, I did not have time to see because there were blows from one direction, from the other direction, so I ran back, -- so I retired back into my barracks.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by Defense:

Q Where were you taken prisoner of war?

A Tunisia.

Q Had you been in the Ethiopian Campaign?

A I am only twenty-one years old, and it would be impossible.

Q On the night of August 14, 1944 when you were coming down Lawton road, where had you been?

A The city.

Q And who was with you?

A Me and two of my friends.

Q Who were the friends?

A Do you want the names?

Q Yes, that is what I am asking, what are the names?

A Angelo Fumarola and Antonio Pisciatano.

Law Member: How do you spell that, can you help me out a bit?

A Fumarola and Pisciatano (spelling).

Did you get off the bus up in the vicinity of the guard house on the post?

No, at the entrance, at the gate.

Q At the main gate?

A At the entrance of the Fort.

Q Do you know what time it was you got off the bus at the entrance to the Fort?

A I don't remember.

Q Do you have a watch?

A No.

Q And you walked from the main gate down to your barracks?

A No, we stopped at the hospital, or the hospital room where they have visitors.

Q About what time did you leave the hospital?

A I don't know.

Q What time was your, -- strike that. Did you have a pass to go to town that evening?

A Yes.

Q What time was your pass due to expire?

A From 11:00 o'clock on. I had to be back in camp at 11:00 o'clock.

Q How did you know you were going to be back in camp before your pass expired?

A It was written, to be back in camp at 11:00 o'clock.

Law Member: Would you repeat that answer?

(Last answer read back.)

Q Well if you did not know any of the time that you were at the hospital or, before that, how did you know that you were going to be back before 11:00 o'clock or by 11:00?

A I don't know. We left the city, it was about five or ten minutes to 11:00. I don't know what time we arrived. We didn't take a bus, we took a taxi.

Q I see. You left town, you left the downtown Seattle at ten minutes to eleven?

A Yes. Yes; about ten minutes to. We were a little late.

Q Where did you see the time?

A There is a clock in the street, a city clock.

Q How long after you glanced at the clock on the street was it before you got into the taxi cab?

A Right away, because right then the taxi was right there, we got it right away.

Q How long did it take you to get in the taxi cab out to the main gate?

A About a quarter to, -- about fifteen minutes.

Q Then did you walk from the main gate to the hospital?

A No, we stopped at the hospital.

Q Well, how did you get from the main gate to the hospital?

A By foot.

Q Well that is what I asked him. How long did it take you to walk from the main gate to the hospital?

A Right away. The hospital is right there, sixty feet.

Q About sixty feet. Who did you go to the hospital to see?

A For our own care, we went into the city and we went there for our own affairs.

Q How long did the process in the hospital take?

A About ten or fifteen minutes.

Q About ten or fifteen minutes. Now from the hospital it is a long ways, isn't it, to the Italian area?

A Yes, sir. We took longer steps and got there faster.

Q Will you tell the witness I would like to have him answer my questions.

A Yes. But I can't remember the, --five minutes to ten, because I did not have a watch.

Q Ask him how far it is approximately from the hospital to his barracks.

I don't know.

Well, ask him if it is as much as two kilometers.

No.

One kilometer?

A I don't know. I don't know, and if I don't know it, I don't know.

Q You can't even approximate the distance from the hospital to your barracks?

A No, because if I said so I will make a mistake, because I don't know exactly.

Q How long did it take you to walk from the hospital to your barracks?

A We don't know but we could calculate. If you take into consideration the length of the steps of a man and measure them.

Q All right, tell him to calculate it then.

A I don't know. I don't know. I can't remember.

You walked just like a man would walk, if you calculate it.

Q Well, did it take him fifteen minutes?

A I don't know. We just took absolute steps like we walk on your feet.

Q Ask him if he came down Lawton Road from, oh, the area of around Barracks 665. (Indicating to map.)

A The street that is always taken when we go to work and when we go to our barracks. I don't know.

Q Tell him to go up to the map and tell me if that is the road he came down.

A I asked him the question, --

Law Member: Well now he has just pointed along Lawton Road. Does that answer your question?

Defense: That answers my question.

Law Member: All right. The witness just indicated and traced his hand along what appears to be Lawton Road along the bottom of the map up to an intersection.

Q You were coming down along Lawton Road past the area indicated at Barracks 665 and 668. Did you see any negroes coming out from there?

A No.

Was that street, as you came down it that night, well lighted?

Yes. There is a, here there is a pole with a light on it.
(Indicating)

Law Member: Now where does that mean?

Defense: I am going to bring it out.

Law Member: Because the reviewing authority does not know where the lights were or where "here" is.

Defense: I am going to have him identify where the lights are.

Q Now as you approached Barracks 665, as you were coming down Lawton Road, indicate the first street light.

A I don't remember. All I remember is that there is one over here near the barracks for the whites. But here I don't remember.

Q You mean around here, you are speaking of the building marked 665 and 666 and 667. He says he doesn't remember.

A I don't remember if there is, -- I don't know if there was any lights along here. Here there might have been one, but I am not sure. (Indicating)

Q You mean here on the right-hand side of Lawton Road opposite 665 there might have been a street light?

A I don't remember one.

Q Well where was the street light you testified was in existence at the time that you saw this soldier coming after you with a knife?

A Here. (Indicating)

Q Well, he has indicated all the way from down Lawton Road, from Virginia Avenue to the Italian area. Ask him to indicate as near as he can recall the specific location of where the street light was at the time he says this colored soldier came after him with a knife?

A As soon as we entered the street here. (Indicating) We met the negroes here.

Law Member: Now straighten that out, will you Major?

Q You say as soon as you entered the street in the intersection opposite of the front of Barracks 718 you encountered the negroes in the intersection?

A Right here.

Q On the right-hand side of the street at the beginning of Lawton Road after it leaves the intersection in a westerly direction from the intersection of Virginia Avenue and Lawton Road.

Trial Judge Advocate: That is right.

Q Now I am asking him to please answer my question again and show where the street light was he mentioned.

A That corner right there. (Indicating)

Defense: Where the red dot is. I mean where the round black dot is in front of the northerly side of Barracks 718.

Law Member: Now have him put a circle around it.

Defense: It is already there.

Law Member: I know, but there are a lot of black dots there.

Defense: It is in black dots.

Q All right. Have him draw a circle around it.

A I am not sure whether it is here (indicating) or here. (Indicating) I am not exactly sure.

Q Well tell him to mark those circles where he thinks it might be.

A Here, either there or there. (Indicating)

Q Now tell him to put his initials opposite each one of those dots. Ask him if that was a powerful light.

A Yes. That is the light that lights our street. It made plenty of light.

Q Ask him if there is a reflector on this light?

A I don't believe so, I don't know.

Q Ask him to indicate the approximate size of the light globe he saw there.

A I don't remember, I can't tell. I can't remember.

Q Well now you have been in this area about four months prior to this night, hadn't you?

A Yes.

Q And you had seen this street light on numerous occasions?

A They passed it every night when they came out from the movies.

Q All right. Can't you estimate the approximate size then, whether it was a big globe or a little globe or what kind it was?

A No, because I never looked at the light. When all I saw

was the light, that was enough for me. I didn't look up above.

Q Was it alight that would give an awfully lot more light than any of the lights in the barracks?

A Yes, that is sure.

Q All right. Now between the place you have indicated the street light to be, in the intersection of Virginia Avenue and Lawton Road and the intersection of Wyoming and Lawton Road, are there any other street lights?

A No.

Q Are there any street or overhead lights in the Italian area?

A No. They put the lights up after this happened. There were lights on the outside of, -- the only lights there were on the outside of the orderly room.

Q Now as you approached down Lawton Road with your companions, how many colored soldiers did you see?

A Four.

Q Now have him indicate on the map approximately where he was at the time he first observed the colored soldiers.

A Here. (Indicating) I was entering the street.

Trial Judge Advocate: That is Lawton Road he is talking about.

Defense: We can agree that he has indicated that he was entering Lawton Road from the northwest of the intersection of Virginia Avenue and Lawton Road.

Trial Judge Advocate: Yes.

Defense: And where they,--

Q Where were the four colored soldiers at the time you first noticed them?

A That point there; or on the left. (Indicating)

Defense: Indicating also the same intersection.

Trial Judge Advocate: That is right.

Law Member: Now why can't we have the witness put a big X on that map and have that X represent the place where he saw the negro soldiers?

Defense: The only difficulty is, -- I had that in mind,-- but we are going to have a lot of witnesses here, and if we do that with the other witnesses, unless we have more marks it is

going to be so marked up it will be uninterpretable.

Law Member: It is awfully hard for the Reviewing Authority to review maps unless there is some mark or indication or identification put on the map by the witness.

Defense: May I make this suggestion. I am just wondering if after the recess we might have a lot of other blue prints run off this evening from this one to use with other witnesses.

Trial Judge Advocate: Well why not just have him put his initials beside the X and if we find similar initials with others, then we can change it some way.

Law Member: He has already put his initials. G.B. to indicate the street light.

Trial Judge Advocate: Well he can use his initials with an X.

Law Member: Let him put an X on the street at the point where he saw the negroes.

Q Have him put an X with his initials by it at a point on the map where he first saw the colored soldiers.

A (Marking map.)

Q Now be sure he understands that so we don't have to go back and change it. That pen doesn't write very heavy. Do you have one that writes heavier, Colonel?

A (Marking on map.)

Q All right, now have him put X-1 with his initials indicating at the point he was when he first saw the negroes he has already identified.

President: How much longer are you going to be with this witness, Counsel?

Defense: Well, I wouldn't be very long if he would answer my questions.

Trial Judge Advocate: Now just a minute.

Law Member: Now, Counsel, let's don't have comments like that. We don't like to have those remarks and you don't want to forget he is speaking through an interpreter, and he is in a strange land, and I think under the circumstances he is doing the best he can and so are all of us.

Defense: Well my only answer to that would be that I would be perfectly agreeable to have a recess taken at any time.

President: The Court will take a fifteen minute recess, and will reconvene at fifteen minutes to eleven.

(Court was recessed at 10:30 a.m. to 10:45 a.m. at which time proceedings resumed as follows:)

Defense: Colonel Jaworski, I think it may be agreed, may it not, that all of the testimony of the witness Balle, with reference to a map refers to Prosecution Exhibit 2?

Trial Judge Advocate: That is quite right. Let the record show that the personnel of the Court, personnel of the Defense, the accused and the personnel of the Prosecution all are present. The reporter and interpreter are also present.

Defense: Where is the witness? I take it the Court is ready to proceed?

President: The Court will come to order.

Defense: Would you read the last question?

(Last question read back.)

CROSS EXAMINATION (Continuing)

Questions by defense.

Q Well I expect what is on here is intended for X-1,--you would never know it.

Law Member: You mean it appears on the map as 1-X?

Defense: Yes. Let the record show that the last I asked him to mark as X-1 he has marked 1-X.

Q Now did you see any of the colored soldiers prior to the time they reached Point X?

A No.

Q What were they doing at the time you first saw them?

A They were talking among themselves.

Q Just standing on the corner?

A Yes, on the left side.

Q Describe the four colored soldiers that you saw?

A Those four soldiers, I can't remember exactly whether they were all tall men or not.

Q Were they all approximately of the same size?

A I don't know.

Q Were some of them lighter in color than the others?

I don't remember. All I saw was they were negroes.

Q How were they dressed?

A In O.D's.

Q Do you know how they were dressed or are you just guessing?

A I think so. They were dressed like that. I can't say exactly because I didn't take particular notice.

Q Did they have hats on or not?

A Yes.

Q All of them wore hats or caps?

A I can't say whether all four had.

Q Well how many of the four had?

A I can't say whether all four had hats.

Q Did you hear the men talking as you approached?

A Yes.

Q What were they talking about?

A They were saying, "Italian God damn son-of-a-bitch shit."

Q They were all saying that?

A I heard they were talking, -- they were talking among themselves I can't be sure whether they were all saying that or not.

Q Did you hear them say anything else amongst themselves?

A They were talking like that, then they were talking about, oh, other things. I heard that they said those words, and after, I didn't understand anything else. Because those bad words I understand very well.

Q Now after you first saw the colored soldiers at the point marked, did they walk towards you?

A No, they were walking on the left, they were coming this way, and we were going that way. (Indicating)

Q They were coming up the hill?

A (Indicating) They were walking this way, and we were walking this way.

Q In other words I think it can be agreed, can it not Colonel, that he has testified that they were going in a southeasterly direction up Lawton Road opposite Building No. 700, and that the Italians were going in a northwesterly direction along the same road?

Trial Judge Advocate: All right.

Q Now you testified a moment ago they were standing on the corner. Now you have testified they were coming up the street. Now which is correct?

A No, sir; no, sir. I made this declaration, that they were coming up on this side (indicating), on the left, and we were going on this side (indicating)

Q Now were the soldiers, colored soldiers, in approximately the position shown by X, at the time one came towards you?

A They didn't approach right away. We were walking, we continued to walk up this street. (Indicating)

Q You continued to walk down Lawton Road from the intersection of Virginia Avenue and Lawton Road?

Interpreter: Would you repeat that please?

Defense: Well, I was not repeating it for you. I assume we can agree on that for the record. Down hill towards the northwest.

Law Member: Which is down?

Defense: Down is this way (indicating and uphill is towards the northeast as shown by the legend on the map. May it be stipulated the witness indicated the negroes in accordance with my last statement there?

Trial Judge Advocate: Yes.

Q Now, did all four of the colored soldiers come towards you and your companions?

A No. We continued to walk, and we stopped at about this point. (Indicating)

Q Have him mark that as X-2.

A (Marking on map).

Q Now the witness has marked 2-X at the point indicated. When you reached the point indicated at 2-X, what happened?

A One of the colored boys called out, "Hey, Italian," and I turned around, and my friends took about three steps from here to there.

Q He turned around and his friends took three steps. In which direction on the map?

A We made a complete about face and was facing the other way. As soon as we turned around, one of the colored men ran from this point here. (Indicating)

From Point X?

From Point X to where he was, -- towards him.

Q Towards Point 2-X?

A Yes.

Q Did this man have a knife?

A Yes. When he was coming at me, when he was running,--

Q (Interposing) I just asked him if the man had a knife. Where was the soldier when you first saw that he had a knife?

A Yes. This soldier ran towards me that had the knife was right here. (Indicating.)

Q Point X-2. Was that the first time you saw the knife?

A Yes, that was the first time I saw the knife.

Q What kind of a knife was it?

A I don't know. I just saw the blade sparkle. I didn't see the handle.

Q What kind of a blade was it?

A I can't tell exactly what type of blade it was.

Q Tell him to indicate the length of the blade.

A About that big, I am not sure, i don't know. (Indicating)

Trial Judge Advocate: About four inches, wasn't it?

Q Have him indicate the length again.

A (Indication)

Defense: (Measuring) Four inches.

Law Member: How many?

Defense: F our inches.

Q Was it a straight blade or a curved-blade knife?

A I can't say. All I saw was the blade, and I can't remember anything else. I saw the light reflection on the blade.

Q At the time he saw the knife, which way was the colored soldier facing?

A Exactly in front of me.

Q Ask him to indicate on the map.

A (Indicating) He was here, facing this way, and the man was here, facing this way. (Indicating)

Defense: Well may it be agreed, --

Interpreter: (Interposing) He said his friend had his back to my back.

Defense: May it be agreed that the witness was facing up Lawton Road, to the southeast, and the colored man was facing down Lawton Road towards the southwest, and he had the knife in his hand?

A Yes.

Q What did your two friends do?

A They just stood still. About two steps away, two or three steps away, they didn't even move.

Q Didn't they even run?

A They stood still. Just about the time I turned around, I saw the knife, and I hit him, and I gave him a punch.

Q Where were the other colored soldiers at the time?

A They were right here (indicating). They didn't move.

Q They were at the point marked X?

A Yes.

Q Do you want this Court to understand that when this colored soldier came after you with a knife you stood there and fought with him instead of running?

A No, I didn't have any intention to fight him because I was more frightened than he was. I had no intention of fighting.

Q Ask him if he didn't stay there and trade punches with him after he saw the knife rather than run away.

A Yes, I stood still, just like this.

Q All right. Ask him how long this altercation with the colored soldier lasted? . . .

A A minute, a minute and a half, two minutes. Just an act.

Q Then you went on to your barracks?

A Yes. When I reached this point (indicating) I ran directly to my own barracks.

Q How long a period of time elapsed after you reached the barracks before you heard the rocks he was talking about?

A About fifteen or twenty minutes.

Q About fifteen or twenty minutes?

A Yes.

Defense: That is all.

Trial Judge Advocate: No further questions by the Prosecution. Does the Court have any questions?

Law Member: I didn't quite understand where the other two Italians were.

Interpreter: Three steps distant he says.

Questions by Law Member:

Q Well then did they all run down the hill together to their barracks?

A No, I ran to my barracks, and they ran to their part.

Q But that was relatively together?

A Yes, they were two steps ahead of me.

President: Are there any other questions by any members of the court?

Questions by Colonel Stecher:

Q When he was in the barracks, when you were in the barracks how did you know the men outside were negroes?

A I saw from the window.

Q He could see the color?

A Yes, against the light of the orderly room that was on, that was lit.

Q How close were they to him?

A About twenty-five feet. Wouldn't you make it? Yes.

Q About forty-five feet?

A No, about twenty-five.

Q There was a light on in the orderly room outside?

A Yes, outside of the orderly room.

Q How many were in that crowd?

A About thirty.

Q About thirty? All right.

Questions by the President

Q Were the lights on in your barracks?

A Yes. We put them out right away.

Q What do you mean by right away?

A As soon as we saw the mass of negroes surrounding our camp around that area we put them out.

Q The lights were on then until you heard the negroes?

A It was out. Then they didn't know what was happening, so they put them on, and then they put them out again.

President: Are there any further questions?

Questions by Colonel Stetcher:

Q This light was on at the orderly room throughout, or did it also go out?

A Yes, it was always on.

Q It continued to light?

A Yes, it always was lit.

Q Did he see,-- did you see who was wielding the axe?

A Yes. I saw one had an axe in his hands. The others, some of whom had clubs and other things.

Q At what window were you, the right or left, from the inside to the door, and how far were you from it?

A Entering from the barracks here (indicating) he was to the, -- on the left side.

Q From the rear of the barracks.

A From the entrance.

Q And that is on the lower end.

Law Member: That is the south side of the barracks.

Q The south side of the barracks. And he was on what side?

A The window that overlooks the orderly room, that you can see the orderly room from.

Law Member: Can we agree the door entering the barracks is on the south, and the window is on the west?

Defense: I don't know.

Law Member: That is where he pointed.

Q Where is the door?

A Right here. (Indicating)

Q Law Member: Now where is the window?

The Witness: This side, the one overlooking the orderly room.

Law Member: Now he has designated the south side of the barracks as the entrance door, and the window through which he observed was on the west.

Defense: Yes.

Trial Judge Advocate: That is correct

Questions by Colonel Stetcher:

Q: Did you see the negro wield the axe?

A I saw them all running towards the orderly room, and I saw one with an axe in his hand, and then I saw they were coming towards the barracks, so I ducked down.

Q You did not see him on the step then, if there was a step outside there, up at the door?

A I did not see them on the step. Well, I saw them all at the foot of the stairs.

Q Were they coming or going?

A I saw them all from here (indicating) going to the right from here, going to the left, and some were going in all directions.

Q When he saw the man with the axe, did he already strike the door, had he already struck it twice, or was he coming towards the door?

A At my door, -- not yet. Not yet, at my door.

Q That means then that you first saw him coming to the door to hit it?

A When I saw them all coming they were coming from all directions. I ran back from the window and I placed myself in the center of the room. While I was there my friends were placing cots up against the door. During this time they hit the door with, the axe hit the door, completely knocking down the latch, and it made a hole like this directly, -- (Indicating) that's it.

President: Are there any further questions? Witness will be excused.

(Witness excused.)

President: Are you going to call any more Italian witnesses today, Counsel?

Trial Judge Advocate: It all depends on how much progress we make.

President: I notice you excused the Interpreter is why I asked.

Trial Judge Advocate: That is right, for the time being, just for this witness.

(Private Roy Daymond, a witness for the Prosecution, was sworn and testified as follows:)

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name, rate, organization and station.

A My name is Private Roy Daymond.

Q Your grade is a private?

A Private.

Q And your organization?

A 650th Port Company.

Q Fort Lawton?

A Yes.

Q Now Private Daymond, it will be necessary for you to speak slowly and distinctly and to speak loud so that every member of the court can hear the answers you give to the questions that will be asked you.

A Yes.

President: You talk to the Captain down there on the end can hear you, see.

The Witness: Yes.

Q Do you know the accused, Corporal Luther Larkin?

A Yes, I do.

Q And do you know Private William G. Jones?

A Yes, sir.

Q Who is also an accused here. And do you know William G. Montgomery?

A Yes, sir, I do.

Q State whether or not you and Luther Larkin, Willie G. Jones, and Willie Montgomery had occasion to be together on the evening of August 14, 1944.

A How was that?

Q State whether or not you had occasion to be together, the four of you, on that evening?

A We was together about,--

Q (Interposing) Do you understand the question now? The question was, state to the Court whether or not the four of you were together, that is you and Willie Montgomery, and Willie G. Jones, and Luther Larkin,

A Yes, sir; we was together.

Q You were together on that evening. All right. Now state whether or not at the time the four of you were together any Italian soldiers passed you that evening.

A They did.

Q They did. All right, will you step up here now. This map has been agreed to as partly representing part of Fort Lawton.

Law Member: And is Prosecution's Exhibit 2.

Q And is Prosecution's Exhibit 2. What barracks were you staying in?

A 719

Q All right. That is indicated on the map as Barracks 719. Will you stand off to one side now so each member of the court can see where you are pointing at and point where you and the accused Luther Larkin, and the accused Willie G. Jones and the accused Montgomery were standing when you testified you saw the three Italians?

Defense: I believe he testified he just saw some Italian soldiers.

Q All right. How many Italian soldiers did you see?

A Three.

Q And where were you standing when you saw those three Italian soldiers?

A Right along in here. (Indicating)

Q That is south of the mess hall, which is Building 700, between the mess hall and Lawton Road, is that correct?

A Yes sir.

Q In what direction were the Italian soldiers walking?

A They was walking through the area, along this road. (Indicating.)

Q What road?

A The Lawton Road, going to that area.

Q To the Italian area?

A Yes.

Q All right. The indication was in a northwest direction?

A Yes.

Q Defense: Yes, that is right.

Q As they were walking along there did any of you say anything to any of those Italian soldiers?

A We didn't say a thing except, one man said something.

Q Who was that one man that said something to them?

A William Montgomery

Q What did he say?

A Well, he cussed them and told them to hush up their noise.

Q All right. After he made that remark did anything happen?

A Yes, He ran back there to see what they were saying.

Q To see what the Italian soldiers were talking about?

A They were talking in their language.

Q Well you say he ran over to them?

A Yes.

Q Who was he?

A William Montgomery.

Q Did you follow him?

A No.

Q Did Luther Larkin or Willie Jones follow?

A No.

Q Then all three of you stood there and he ran over to the three Italian soldiers?

A Yes.

Q What happened then?

A After Montgomery had said something to him, the Italians said something in their own language and finally Montgomery

ran back to see what he said, and later on, that is when he got hit, when he turned around and went over there.

Q Could you tell whether or not Willie Montgomery had anything in his hand when he ran back?

A No.

Q All you saw was when Montgomery got hit?

A Yes. He fell to the ground after they were turned around.

Q After they turned around. What did you three do?

A We turned around, and saw Montgomery on the ground and we want and picked up some rocks and threw them at the Italians.

Q Who threw rocks at the Italians?

A Willie Jones.

Q And who else besides Willie Jones, Luther Larkin?

A Yes. They all ran down to the Italian area. We turned around and run over and picked up Montgomery and carried him over to the 719 barracks.

Q All right. You picked him up and carried him over in front of the barracks. Then what did you do with him there?

A We left him out on the edge of the street, in front of 719 barrads.

Q Did Montgomery act like he was knocked out?

A He didn't say anything, he was breathing hard.

Q Just lying there?

A Yes.

Q Did you notice whether he had his eyes open or closed?

A Closed.

Q Did you ever see him open them a little bit?

A No.

Q After you laid him down in front of barracks 719 then what happened next?

A Luther and, --

Q Who?

A Luther Larkin, he called, or got the man, got over him, to see whether his pulse was beating. Finally there was a lot of people gathering to see what happened. And finally one of the boys who was on P.C.Q.,--

Trial Judge Advocate: (Interposing) Can all of you gentlemen understand what he is saying?

Law Member: It is awfully hard to hear him.

Trial Judge Advocate: Talk out loud now, speak right up.

A (Continuing) Finally Luther Larkin,-- well some of the boys wanted to throw some water on him to bring him to. Luther Larkin didn't want no water thrown on him and finally Luther Larkin left there and went upstairs.

Q All right. Did he say why he was going upstairs?

A He said he was going and look for a whistle.

Q And did you hear him ask for a whistle?

A Yes.

Q Just what did he say?

A He wanted to know, did I have a whistle, and I told him no, I didn't have a whistle. So he finally went upstairs.

Q Did you hear what he called out upstairs?

A He wanted to know who had a whistle.

Q What kind of a whistle was this he was asking for?

A Calling out.

Q A formation whistle?

A Yes.

Q Then did you hear a whistle blowing after that?

A Yes, I heard a whistle blowing after that.

Q All right. Now be seated just a minute, Private Daymond. State what happened after the whistle was blown by someone, just what happened after that?

A After the whistle blowed, a lot of the boys fell out.

Q A lot of the boys fell out of the barracks?

A Yes, a lot of them wanted to know what happened, if they was making any formation tonight. They all heard Montgomery was knocked out then and some of them wanted to go down in

the Italian Area. Finally there was five or six went down in the area. Some of them went down there and came back. Then after that, well I left and went in the barracks and came back outside and stood in the street in front of 719 barracks. Later on some of them came back, oh, about an hour or so and I was waiting for some more to come down. Finally well, eight or nine men went down there again, so at last, the last that went out, I went down myself.

Defense: Now I am going to insist that he answer by question and answer form. If he is going to testify he should answer questions. He is testifying now as to a general knowledge and whether or not people went in a certain direction or whether they went into the Italian Area or went into barracks, -- how can he tell sitting down here in front of 719. He can't testify whether they have gone down there in there or not.

Trial Judge Advocate: I am going to ask him a series of questions Major.

Defense: Well, I am going to object to this procedure. He is testifying to a lot of conclusions and a lot of general knowledge.

Law Member: Now, Private Daymond, when the boys left Barracks 719 did any of them say where they were going?

The Witness: They were going down in that direction of the Italian Area.

Law Member: They said they were going in the direction of the Italian Area?

The Witness: They did not say that. I saw some of them going down there.

Law Member: Did they leave and go in the direction of the Italian Area?

The Witness: Yes, they did.

Law Member: And what road did they go down, if any?

Trial Judge Advocate: Will you step up here and point out that route?

The Witness: Went down Lawton Road. (Indicating)

Law Member: But you, yourself, do not actually know whether they went down Lawton Road into the Italian Area or not?

The Witness: Well, I couldn't say they went down into that area, but they went down that way.

Law Member: They went in that direction?

The Witness: Yes.

Q Did you yourself go down into the Italian area?

A Yes, I did.

Q Please point out for the Court just where you went? Let me call attention to the fact that there has been agreed that this is one Italian barracks, No. 708, and this another, No. 709, and the orderly room here, and the latrine and building 712 stand over here, and will you point out to the Court now where you went?

A I was in front of 719 barracks. I came out and I went down to the 700 mess hall. I went on a little hill, kind of like behind the mess hall, and I got on that hill, back of the latrine, and I stood up on the hill to find out,--well, I was just about in front of the orderly room.

Q That is room 713?

A Yes. I stood up there for about five or ten minutes and finally the M.P.'s was bringing some of the boys out of the Orderly room. I am up there in front always of 719, and I was on that side of the orderly room. Then I left from 713,---

Law Member: You better correct him on 719.

Q Yes. The orderly room is 713, not 719. You meant to say 713 about all of this testimony applying to the orderly room?

A Yes.

Q While you were in the Italian area,--strike that. Do you know the accused, Alva Shelton?

A Yes.

Q Will you step over there to the group of accused sitting over there and let us pick out Alva Shelton. Now take your time.

A (Indicating) Here.

Trial Judge Advocate: Will you stipulate that that is the accused, Alva Shelton?

Defense: I don't know.

Trial Judge Advocate: Well, you might ask him

Defense: I am afraid of my stipulating to anything like that. I am just wondering if that doesn't violate his constitutional rights. Well, in other words, it would amount to his incriminating himself.

--well, this is a difficult proceeding here. I think you better identify him.

Q All right. This is the colored soldier you pointed out?

A Yes.

Q And you say that is Alva Shelton (Indicating)

A Yes.

Q O.K. Now let's see. You have testified about Luther Larkin and about his asking for the whistle. Now I wish you would look over this group and point out Corporal Luther Larkin.

A In the back there. (Indicating)

Q In the back over there. All right. Just point him out. He is the fourth man from the end?

A Yes.

President: Which End?

Trial Judge Advocate: From this end.(Indicating)

Q Is this the man you are talking about? (Indicating)

A Yes.

Q You say that is Corporal Luther Larkin?

A Yes.

Q You also talked about Private William G. Jones?

A Yes.

Q All right. Will you look over this group of accused and point out Willie G. Jones?

A He is the man on the back seat. (Indicating)

Q Is this the man you have reference to? (Indicating)

A Yes.

Q And that is Willie G . Jones?

A Yes.

Q Now when you were in the Italian Area did you see Alva Shelton?

A I didn't see him in the Area, no. Outside of the Area.

Q Just tell us where you saw him, on that road?

A I saw him on the Lawton Road.

Q Was that at the time that the colored soldiers were going down in the direction of the Italian Area?

Defense: Let the witness testify.

Q All right, I am just trying to shorten it. All right. Was it or not at the time that the colored soldiers were proceeding down Lawton Road?

A Yes.

Q And did you state that the accused Alva Shelton was,--

A (Interposing) He was down at Lawton Road, and the Italian ran up there.

Q All right, Tell us what you saw, what happened when Alva Shelton was present in that road and when the Italian ran up to him.

A Well shortly after the Italian ran up there, Alva Shelton struck him.

Q What did he strike him with?

A With a little stick.

Q Did you see a stick around here that is like a stick that Private Shelton may have had,--just come over here and look at these things will you?

A Something like that pointer. (Indicating)

Q Something like this pointer?

A Yes.

Q All right. This is a round stick about, would you stipulate it is 32 inches in length?

Defense: Approximately.

Q Approximately 32 inches in length. All right, now, do you know the accused Frank Hughes?

A Yes, I do.

Q You do?

A Yes.

Q Well, let us find Private Frank Hughes.

A (Indicating)

Q Is this Private Frank Hughes here? (Indicating)

A Yes, sir.

Q Did you see him anywhere in the Italian Area that night?

A Yes, I did.

Q All right. Point out to the Court on this map where you saw Private Frank Hughes.

A He was coming out in front of the orderly room.

Q That is Building 713?

A Yes.

Q Did he have anything in his hand?

A He did.

Q What did Private Frank Hughes have in his hand when you saw him leave the orderly room?

A He had a knife in his hand.

Q Will you step over here and see if you see a knife that looks like the one that he had in his hand?

A Like this one here. (Indicating.)

Q Was it about this type of knife?

A Yes, it was.

Trial Judge Advocate: It is agreed then that the witness identified a hunting knife or some kind of a knife known as a bowie knife down in the country where I come from and has a blade about six inches long, is that correct?

Defense: Yes, the knife you have in your hand there has got a blade approximately six inches long.

Trial Judge Advocate: Does the Court care to see the knife? (Indicating)

Q Well, how was he carrying the knife when he was leaving the orderly room?

A Well, he just had it in his hand.

Q Do you know the accused Richard Barber?

A Yes, I know him.

Q Do you know him?

A Yes.

Q All right. Let's go over here and find the accused Richard Barber.

A (Indicating)

Q That is the fourth man on the second row. This is the accused Richard Barber? (Indicating)

A Yes.

Q Did you see the accused Richard Barber in the Italian Area on this night?

A Yes, I did.

Q What was he doing?

A Just standing up.

Q Where was he standing?

A Just standing on the side of the orderly room.

Q Which side?

A On this side. (Indicating to map).

Q Trial Judge Advocate: That is on the southeast.

Defense: On the door side, I think.

Q Is that door at this side of the orderly room? (Indicating)
And you say he was standing close or to the side of the door?

A He was standing in front of it.

Q About how far in front?

A About to that desk. (Indicating)

Q About to the reporter's desk. May we stipulate that is about seven or eight feet?

Defense: I would say nearer about ten feet.

Law Member: I think I would agree with Defense Counsel.

Trial Judge Advocate: Ten feet? Well, if that is ten feet it is the longest ten feet I have ever seen, if it is. Well, this thing will hardly measure it. Yes. Now point

Q Now point again. You mean from the edge of this table to where you are standing or about where?

A Yes, here. (Indicating)

Trial Judge Advocate: (Measures distance.) Seven feet, four inches

Law Member: Seven feet and four inches. Well, I guess we

are both overruled.

Defense: It looks that way, sir.

Q All right. Did the accused Richard Barber have anything in his hand?

A I didn't see anything in his hand.

Q Do you know the accused David Walton?

A Yes, I do.

Q All right. Let us find the accused David Walton over here.

A (Indicating) Over there.

Q All right. Is this David Walton, the accused David Walton?
(Indicating)

A Yes.

Q Did you see him in the Italian Area the night this incident occurred?

Defense: Now if the Court please, I am going to object to Counsel asking these leading questions, and I am going to ask that the Court instruct him not to ask such leading questions. I think the witness is perfectly able to answer direct questions.

Law Member: Well strictly speaking, in the technical sense, it is leading, counsel. Will you reframe your question please?

Q State whether or not you did see the accused David Walton that night in the Italian Area?

Defense: I think that is directing his answer also, if the Court please.

Trial Judge Advocate: Well, I have a right to direct the witness' attention to the point.

Defense: But not to the answer.

Trial Judge Advocate: No, that is just directing it to the point of inquiry.

Law Member: It seems to me that is so. But would you reframe your question, Counsel?

Q Where did you see the accused David Walton that night?

A I saw Private Walton come out of the orderly room.

Q That is Building No. 713?

A Yes.

Q And from what part of the building was he coming out?

A The front door.

Q Is there a door in front of the orderly room?

A Yes.

Q And he was coming out of that door?

A Yes.

Q Did he have anything in his hand?

A Yes, he did.

Q What did he have in his hand?

A A stick.

Q What kind of a stick?

A A large stick.

Q Do you see anything over here among these things that resembles the stick that he had in his hand?

A A little bit larger than this one. (Indicating) Here, a little bit larger than this one.

Q A little bit larger. Well, in what respect was it larger; longer or thicker or what?

A A little bit wider.

Q A little bit wider.

A It wasn't that long. (Indicating)

Q You mean it was not as long as this stick, and a little wider?

A Yes. And a little heavier.

Q All right. Now you spoke of the accused William G. Jones and you identified him. Now after you went to the Italian Area did you or did you not see William G. Jones, the accused, down there?

A Well, I didn't see him down there.

Q You did not see him down there?

A No.

Q Do you know James C overson?

Law Member: How do you spell the name?

Trial Judge Advocate: C-o-v-e-r-s-o-n.

A Yes, I do know him.

Q Will you come over here then and point out among these accused James Coverson?

A (Indicating) The second man over in the front row there.

Q Is this the man you pointed out? (Indicating)

A Yes.

Q Did you hear James Coverson make any statement?

A Yes, I did.

Q After this incident occurred in the Italian area?

A Yes, I did.

Q And what did you hear James Coverson say?

A He said he had beat up one of those italians unmercifully.

Q How long after this incident occurred was that statement made?

A It was right after the sergeant told us to come inside.

Q Was that on the night that this event occurred out there,

A Yes, it was.

Q Now did you have occasion to be called before the accused Luther Larkin to give testimony against him?

A Well, he,--

Q (Interposing) Well were you called before the accused Luther Larkin at any time to give testimony in his presence against him, did you see him before?

A Yes, I did.

Q Did you at that time relate in the presence of Luther Larkin the testimony that you have given against him here?

A Yes, I did.

Q What did Luther Larkin say when you gave that testimony?

A Well, he said I was all right.

Q He said you were all right?

A Yes, sir.

Trial Judge Advocate: If the Court please, now I observe it is about 12:00 o'clock and we cannot possibly finish with this witness before noon. There is one matter there is a little something different from what I have been asking that I am going to get into with this witness, so I just wondered what the Court would like to do.

President: The Court will recess and will reconvene at 1:30. I believe this witness who is being examined at this time should be kept under custody while he is being examined and during the recess.

Trial Judge Advocate: Yes.

Defense: I want to demand at this time that the Trial Judge Advocate produce and have available in the Court when it next reconvenes the statements of this witness which is a basis or a part of the investigating officer's report. I understand you have those, Colonel.

Trial Judge Advocate: I am very certain that I do not have any such thing as you have in mind that would fit the description you speak of. I would be glad to bring the investigating officer's report but I am sure I have not any statement like that which you speak of.

Law Member: What do you have in mind, Counsel?

Defense: I want that for the purpose of cross examination. It appears that there has been a statement made previously and I want that for cross-examination.

Law Member: Do you have that, Colonel?

Trial Judge Advocate: Yes, the investigating officer's report is all I have.

Defense: Part of the investigation report was a summary of the expected testimony which was taken from the statements of certain witnesses and it was entitled itself as expected summary of testimony and I want the statements from which this summary and the expected testimony appears or was taken from.

Trial Judge Advocate: Of course, I will be very glad to bring it in, if there is any such statement exists. Of course, if Counsel wants to bring something in he can submit his request to such authority as made the investigation. I don't have such information as he is requesting.

Defense: Well, I may want to do that later on but not without its being identified by this witness first.

President: The court will be in recess for the noon recess:

(Whereupon, the court recessed at 11:55p.m., to reconvene at 1:30 p.m., November 20, 1944.

Fort Lawton Staging Area
Fort Lawton, Washington
20 November 1944

The Court reconvened at 1:30 o'clock p.m., 20 November 1944.

President: The Court will come to order.

All members of the Court, personnel of the Prosecution and Defense were present. The reporter was also present.

A roll call was then conducted by the Assistant Trial Judge Advocate of the accused; all of the accused were present.

Defense: I wonder if it can be stipulated between us that the Montgomery who has been referred to in the testimony so far is not the Montgomery who is one of the accused in this case.

Trial Judge Advocate: That is quite allright. The testimony showed it was Willie Montgomery and the accused is Roy L. Montgomery. It is a different Montgomery entirely.

Private Roy Daymond, 650th Port Company, a witness for the prosecution, was recalled and further testified, as follows:

DIRECT EXAMINATION

Q You are reminded you are still under oath.

A Yes, sir.

Q Now, Private Daymond, when you were a young boy you went to the boys' reformatory at one time, did you not?

A Yes, sir.

Q How old were you then?

A 14

Q How old are you now?

A 19, sir.

Q And how long did you stay in the boys' reformatory?

A I was given a year and eight months but I was just there nine months.

Q They gave you a year and eight months but you just served nine months?

A Yes, sir.

Q After that nine months expired have you been in any trouble since that time?

A No, sir, I haven't.

Q What was the particular offense that you went to the reformatory for?

A I was running with bad boys.

Q Well, what particular offense or what particular thing did that group of boys do? What were they charged with and what were

you mixed up in connection with?
A Stealing, sir.

Q Now, have you been promised anything at all for testifying as a witness in this case?

A No, sir, I haven't.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by Defense:

Q Daymond, on this evening of August 14, what time did you eat dinner that night?

A I ate dinner that evening? I eat--I didn't eat that evening.

Q You didn't eat any dinner at all that evening?

A No, sir.

Q Where were you at meal time?

A I was around the barracks.

Q What is the reason you didn't eat dinner?

A I wasn't hungry.

Q Did you eat anything at noon that day?

A I did.

Q What time did you go out of your barracks that evening?

A What time did I go out?

Q That was my question, what time you went out of your barracks that evening?

A I went out, oh, about 8:20 that evening, that night. I went to the theatre.

Q What time did you go to the theatre?

A The last show started about 8:30.

Q You went to the last show at 8:30?

A Yes, sir.

Q Had you been out of your barracks at all that evening before you went up to the show?

A I was around about.

Q Daymond, my question to you was what time that evening after the meal hour did you leave your barracks?

A I left about 8:30.

Q You left at 8:30?

A Yes.

Q And you were in your barracks continuously until 8:30?

A I wasn't.

Q What time did you go out of your barracks? Am I speaking plainly?

Trial Judge Advocate: Just a minute. If it please the Court, certainly in fairness to the witness Counsel should indicate what time he is talking about. He is apparently asking one question where it was indicated he left at about 8:30. If you have reference to an earlier time, I ask the time be fixed so the witness knows what he has reference to.

Q Daymond, you said you didn't go to dinner?

A I didn't go to dinner that evening, sir.

Q Well, the meal hour is around 5:00 to 6:00, isn't it?

A Yes.

Q And you stayed in your barracks?

A I didn't stay in my barracks.

Q I understood you to say you were in your barracks?

A I left my barracks about 8:30, going to the show. That evening I stayed in the vicinity, area.

Q All right, let's take at 5:00. Were you in your barracks at that time?

A I think so.

Q You think you were in your barracks. When after that did you leave your barracks for the first time?

A When I left that evening, the first time I left, I was looking for a boy. I didn't find him --

Q I didn't ask you that. I asked you about what time you left.

A I didn't notice any time I left but I got up there before 8:30 after I left my barracks.

Q So you were in your barracks from the time of about 5:00 when the other men went to dinner, up until approximately 8:30, is that correct?

A I didn't say I was in my barracks from 5:00 until 8:30.

Q Answer me about when you left your barracks for the first time that evening after the dinner hour?

A I don't know what time it was.

Q You don't know what time it was?

A No, sir.

Q What time did you go into the show?

A I went to the show at 8:30.

Q At 8:30. Where had you been before you went to the show?

A Around about 719.

Q You had been around the barracks at 719?

A Yes

Q And you went directly from the barracks 719 up to the show?

A That's right.

Q And who was with you when you went to the show?

A Went by myself.

Q How long did it take you to go up to the show? 10 minutes, 15 minutes, something like that?

A About 8 or 10 minutes.

Q About 8 or 10 minutes. You went from your barracks up to the show?

A That's right.

Q How long had you been in the immediate vicinity of your barracks before you started up to the show?

A Went up there before 8:30. Was in the area before 8:30.

Q Had you been down to the PX that evening?

A No, I hadn't.

Q As a matter of fact, you were down to the PX drinking beer all evening, weren't you?

A No, sir.

Q You hadn't been down there at all?

A No, sir.

Q Were you over at a party going on in the 578th mess hall across the street from building 720?

A No, sir, I wasn't.

Q You weren't over there at all?

A No, sir.

Q But you can't tell the Court now what you were doing between dinner time and the time you went up to the show?

A I can't recall.

President: Speak a little louder, please.

Trial Judge Advocate: You will have to speak out. Speak out loud.

Q You say it is a little difficult for you to recall events that occurred that far back?

A I can't recall what time it was.

Q That evening before you went to the show what men, what colored soldiers, do you recall seeing?

A Before, I saw everybody in the whole Company was there.

Q Name one or two specific individuals you saw that evening before you went to the show?

A I can't recall their names now.

Q You are a member of the 650th Company?

A Yes.

Q How long have you been in the 650th; about how long ago was that?

A Since February.

Q And you know most of the men in the Company, don't you?

A Sure do.

Q You know all of these accused here?

A I don't know all of them. I know practically all of them in the 650th.

Trial Judge Advocate: Raise your voice. Members of the Court can't hear you. Speak loudly, Private Daymond.

Q Before you went to the show that evening name any one or more accused here that you saw?

A Before I went to the show?

Q Before you went to the show.

A You mean prisoners accused in the riot?

Q You see these men sitting over behind me?

A Yes, I do.

Q Name any one or two of them you saw that evening prior to the time you went to the show?

A I saw one, sir.

Q Who did you see?

A James Coverson.

Q Where did you see him?

A He was upstairs in 719.

Q In the barracks?

A Yes.

Q About what time did you see him?

A When I was leaving for the theater, sir.

Q Before you were leaving to go to the theater?

A Yes.

Q Did you have a conversation with him?

A I just asked him a few words.

Q What words did you ask him?

A I asked him where was Cunningham.

Q You remember specifically having that conversation?

A Yes.

Q Do you remember his answer?

A Yes, sir.

Q What was his answer?
A Cunningham had gone to the theater.

Q Who else did you see on that evening?
A Well, after I talked to him, I left.

Q Who did you see before you talked to him?
A The boys down in the Company.

Q Name one or two of them you saw.
A I saw William G. Jones.

Q You saw William G. Jones. Where did you see him?
A He was in the barracks.

Q Whereabouts in 719?
A Downstairs

Q What was he doing down there?
A Wasn't doing anything.

Q Q Did you talk with him?
A No, I don't think I did.

Q You don't think you talked with him. That is all you can recall seeing early that evening?
A Yes.

Q Was Jones talking with anybody at the time you saw him?
A I don't think so.

Q Was he playing cards, shooting craps, or anything of that kind?
A No, sir.

Q He wasn't doing anything. Then you went up to the show.
By the way, what picture was playing that night?
A I don't know the name.

Q What was it about?
A I don't know that.

Q You don't recall that. What time did you get out of the show?
A Oh, it was about ten after eleven.

Q About ten minutes after eleven. Then what did you do?
A Came on back to the barracks.

Q Came on back down to your barracks?
A Yes.

Q Which way did you came back down?
A I came down, I don't know the name of the street --

Q (Interrupting) Look back at the map, which is Prosecution Exhibit 2.

A I don't think it was on this map.

Q Here is your barracks 719; here is the other part of the colored area over here, starting with barracks 668 up to barracks 665. Here is Lawton Road coming to the area; here is the Italian Area down here. (Defense Counsel has been indicating on Prosecution Exhibit 2). Can you tell us how you came back down from the show?

A From 719 I just went straight up Virginia Street until it turns. I don't know the name of the street.

Q Was that when you went to the show?

A Yes, sir.

Q I am asking you when you came back from the show what road did you follow?

A The same road I went.

Q You came down Virginia Avenue past the Post Exchange, the PX?

A Yes, I did.

Q You came down that?

A Yes, sir.

Q Were you alone?

A Yes, sir, I was.

Q You were alone at that time?

A Yes, sir.

Q Did you go into the PX?

A No, I didn't.

Q Did you see any other colored soldiers around the PX?

A No.

Q You didn't see a soul?

A No.

Q Did you go by the day room?

A No, I didn't.

Q Well, you have to go by the day room in coming down Virginia Avenue, don't you?

A From the theater?

Q Yes.

A Well, I come through that way, come from the show around in here (indicating on Prosecution Exhibit 2).

Q Which way did you come? I understood you to say you came down Virginia Avenue towards the south, past the PX, is that right?

A The PX is on this side and the way you go to the theater is back this way (indicating on Prosecution Exhibit 2).

Q Daymond, answer me this. As you came back from the show to your barracks did you pass the PX?
From the show?

Q Yes.

A I don't remember seeing no PX. I saw a depot, a warehouse.

Q You know where the PX is, don't you, in your area?

A Yes, I know. That is back this way. Indicating on Prosecution Exhibit 2).

Q Did you come by the PX as you came back from the show?

A No, sir, I didn't.

Q You didn't come down Virginia Avenue?

A I went up Virginia Avenue when I went up to the theater.

Q You went up Virginia Avenue. Didn't you say a moment ago coming back from the show you came down the same street?

A Well, the PX is back this way (indicating on Prosecution Exhibit 2).

Q I don't mean that. Look at the map. The PX is in here someplace, building 723 or 724. Well, you know where your company day room is, don't you?

A Yes, sir, I do.

Q That is about building 705, isn't it?

A I think it is 722.

Q When you went up to the show did you go up Virginia Avenue and past the PX?

A That is going the wrong way.

Q You didn't go that way?

A No.

Q All right, which way did you go? Did you go in the opposite direction and up the hill?

A Yes.

Q You went that way. And did you come back that way?

A Yes.

Q Well, you came down a paved road, did you?

A Yes, sir.

Q On the paved road which curves coming down a hill?

A Yes, sir.

Q Were you alone?

A Yes, sir.

Q Then when you came back down to your area, you passed some

of the barracks where the 651st lived, didn't you?

A The 651st is on that side(indicating on Prosecution Exhibit 2).

Q It is on your left hand side as you are coming down the road?

A Going this way (indicating on Prosecution Exhibit 2).

Q As you were coming back down the road towards your barracks --

A 719, 651st barracks is over here (indicating on Prosecution Exhibit 2).

Q On your left. That's right. Were you alone as you came down this road?

A Yes, I was.

Q Did you meet anyone coming up the path?

A I met somebody but it was dark. I couldn't tell who it was.

Q Isn't it well lighted around there? I am talking about coming down Lawton Road past the barracks occupied by the 651st and down to your barracks. Is it lighted there or not?

A Down a little further there is some lights--

Q Don't get ahead of me. I am asking you about the area down Lawton Road near the barracks number 665, 666, 667 and 668. Is it lighted along that road? On this road, Lawton Road (indicating on Prosecution Exhibit 2)?

A There is a little light. There isn't much light.

Q Well, what light is there there?

A There is light from the barracks.

Q You mean light from the inside of these barracks 665 to 668?

A See, the barracks have lights. That is the only thing you can see.

Q The lights on the inside of them?

A Lights on the inside of the barracks.

Q There are no lights on the ends of these barracks -- on the street end?

A I didn't see any.

Q Are there any street lights coming down there?

A No, sir.

Q Down Lawton Road?

A No, there isn't.

Q Any other street lights down Lawton Road or on Virginia Avenue?

A Yes, Sir.

Q Where?

A Up there by the theater; where you catch the bus.

Q They are not down in your area?

A No.

Q On this night was there a single street light on this street?
I am indicating Virginia Avenue in front of your barracks?

A Any light on?

Q Any street lights?

A I didn't see any.

Q Have you ever seen them at any time?

A No, sir, I haven't.

Q Are there any street lights going down Lawton Road, from the intersection of Virginia Avenue and Lawton Road down toward the Italian area?

A No, sir.

Q Now, as you came down Lawton Road towards the intersection of Lawton Road and Virginia Avenue, did you meet anyone walking up the road in the opposite direction?

A Yes, several of them.

Q Several people. Colored soldiers?

A Yes, sir.

Q Who were they?

A I don't know the names.

Q You can't recall who they were?

A I don't know. It was dark around there.

Q Pretty difficult to see anything there that night, wasn't it?

A It wasn't difficult to see. You can't see nothing until you got up clear to the barracks where the lights was on.

Q Any lights on in 718 when you came down from the show?

A On 718?

Q This building here. (Indicating on Prosecution Exhibit 2)?

A That's a warehouse.

Q I didn't ask you what it was.

A I didn't see any.

Q You didn't see any lights in it. Any lights in barracks 719 when you came down there, lights inside the barracks?

A Yes.

Q Were there lights over here in 700?

A Yes.

Q There were lights in 700?

A Yes.

Q In the mess hall?

A Yes, sir.

Q After 11:00 at night?

A Yes.

Q There were lights over there; you are sure o. that?

A Yes.

Q On the inside of the building?

A Yes, sir, on the inside.

Q You saw colored soldiers coming up the street but you haven't any recollection of who they might be?

A No.

Q You couldn't distinguish who they were?

A No.

Q Now after you got down in the vicinity of your barracks, who was the first man that you saw that you recognized?

A Luther Larkin.

Q Well, about approximately where was Luther Larkin when you first saw him?

A Walking along.

Q Show us on the map just about where Luther Larkin was.

A About right along here (indicating).

Q Wait a minute. We will mark that You indicate the place here.

A (Witness indicates).

Q Let's mark that with the letter "D". Is that right?

A Yes, sir.

Q Now where were you when you first saw Larkin?

A We was standing up.

Q Yes, I assume you were standing up, but about where was the location?

A I was walking down--

Q Point on the map and show me approximately where you were.

A I was just walking down.

Q All right, you sh^{OW} us where you were when you first saw him.

A Right between -- right along in there (indicating).

Q You put it past him?

A Past.

Q Just put your finger there and tell us where you were without brushing it clear all over the map. About there (indicating on Prosecution Exhibit 2.)

A Yes

Q All right. About how far away was he at the time when you first recognized him?

A About as far as the table (indicating).

Q The edge of the table?

A Yes.

Q About three or four feet?

A Yes.

Q I marked the place where you were "D 1" when you first saw Luther Larkin. How was Luther Larkin dressed when you saw him?

A He had on his o.d.'s.

Q Wearing a hat or not?

A I didn't pay any attention to that.

Q Did you see anybody else there?

A Jones, Willie G. Jones.

Q Where was Jones?

A He was standing there too.

Q Was he on Larkin's left or right, or where?

A I don't know.

Q Well, you were there, you were the one saw him; you will have to tell us. Was Jones standing on Larkin's right or left, or in front of him, or behind him, or where was he?

A Well, I was thinking he was on the left.

Q You think Jones was on his left. Let's mark that D 2 on Prosecution Exhibit 2. Who else was there?

A William Montgomery.

Q William Montgomery. Where was Montgomery located with reference to Larkin?

A Inside too, on the left.

Q He was on Larkin's left?

A Yes, sir, he was.

Q Was he between Jones and Larkin, or was he on the other side?

A On the other side.

Q On the other side of Jones or on the other side of Larkin?

A On the other side of Jones.

Q Let's mark that "D 3", then, on Prosecution Exhibit 2. Now, how was Jones dressed?

A He had on his o.d.'s

Q Did he have a hat on or not?

A I don't think I saw him with no hat on.

Q You don't think he had a hat on either. How about Montgomery? How was Montgomery dressed?

A He had on o.d.'s.

Q They all had on o.d.'s?

A Yes.

Q And how was he dressed; did he have a hat on?

A No.

Q Now, as a matter of fact, you know those men had all been at a party?

A I didn't know it until I came back.

Q Ever see them dressed in o.d.'s to go to a party? You know they had been to a party?

A They didn't tell me they had no party over there.

Q Did you join the men?

A Went up and talked to them.

Q What did you talk about?

A Different things.

Q Well, tell us some of the things you talked about.

A Well, we talked about -- I tell you we were talking about those Italians.

Q You talked about the Italians. Had you seen the Italians coming yet?

A We didn't see them.

Q You hadn't even seen any Italians yet but still you were talking about the Italians?

A Yes

Q What were you saying about the Italians?

A Going down there and whip those Italians.

Q You were talking about going down there to whip the Italians before you even saw them that evening, is that right?

A That was after I came back from the show. Went up there and talked.

Q When you came back down from the show here you just testified you ran into Jones, Larkin and Montgomery?

A Yes, sir.

Q And the four of you stood there and talked for a while before you saw the Italians?

A Yes, sir.

Q You were there quite a little while before you saw the Italians?

A Yes.

Q What did you talk about during that period before you saw the Italians?

A Finally got to talking about a girl.

Q What girl were you talking about?

A I don't know her name.

Q Somebody you know?

A I saw her once or twice at the Service Club. Another soldier was going to carry her home.

Q Was she there that evening with you?

A Not with me. She wasn't with me.

Q Was she there in the group?

A She was at the Club, at the mess hall.

Q At the Club?

A At the mess hall.

Q The 578th mess hall?

A Yes, sir.

Q How do you know she was over there?

A She came out of the mess hall. I saw her when she came out from the dance.

Q She came out of the mess hall?

A Yes.

Q Who did she come out of the mess hall with?

A Some soldier and more girls.

Q You don't know who the soldier was?

A No, I don't.

Q How long were you down there before the Italians came down the road?

A I don't know that.

Q Well were you there 5 minutes, 10 minutes, 15 minutes? How long was it approximately?

A I don't know.

Q Well, how long did you talk about the girl?

A Wanted to know if Jones wanted to take the girl into the bus line, and he said no, and finally the girl came over there and told Jones that a soldier at the bus line had brought her down to the mess hall. Luther Larkin asked him did he want to carry the girl up to the bus line and Jones told him no. Finally we stood up and talked and Luther Larkin, he asked him did he want to go and get the girl and carry her up to the bus line, and Jones said no, he didn't want to take her up there. Finally we were talking about that. Later on I looked and some soldiers were going in the barracks after the mess hall dance over there. Finally we were talking about that and decided to come into building 719. We was coming on, so we stopped again. When we stopped again we stood up there.

Q Did you change your position or were you right there in that

same position all the time?
A We changed positions.

Q Where did you go from there?
A To in front of 719.

Q The four of you?
A Four of us.

Q Then what happened?
A Then got up there, so finally we decided to come on into the barracks. Later on here came the Italians, all three of them coming on down the hill. Coming on down the hill--

Q Which hill were they coming down? The same way you had come back from the show?
A This way (Indicating on Prosecution Exhibit 2).

Q Where did they come from? The same road you came from the show?
A Yes. Finally --

Q Stand up. I might want to refer to the map.
A -- (Continuing previous answer) finally Montgomery said to one of them--

Q (Interrupting) What were Montgomery's exact words he used towards that Italian?
A He told him to hush his goddamn noise.

Q You hear that?
A Yes.

Q Then what happened?
A Then after then, well, one Italian said something in his language.

Q Where were you at the time that Montgomery told them to hush up that goddamn noise?
A Right in front of barracks 719.

Q On the street?
A On the sidewalk. Later on --

Q Wait a minute. Where were the Italians at that time?
A About in here (indicating on Prosecution Exhibit 2).

Q Show me as near as you can where they were when Montgomery spoke to them. Well, you were standing there and looking at them?
A I wasn't looking at them. They were passing by.

Q All right. Were were they at the time you saw them and they were passing by?
A Went on past the mess hall.

Q Were they down past the mess hall at the time Montgomery first spoke to them?

A No.

Q Where were they?

A About in here (indicating).

Q About right over in here. That is approximately the vicinity of the letter "N" on Lawton Road, is that right?

A Yes, sir.

Q All right.

A Later on Montgomery run back to see what he said.

Q Did any of you three go with him?

A No, we didn't. We stood up there. Montgomery went back there. Finally we didn't hear nothing out of him.

Q Could you see what was happening down there?

A We couldn't see what was happening.

Q Was it too dark to see what was going on down there?

A It wasn't too dark.

Q You could see the Italians and see Montgomery?

A When we go out Lawton Road --

Q (Interrupting) Could you see them at the time Montgomery caught up with them?

A I see them. We turned around.

Q You could watch them and see what was going on?

A They passed right by us.

Q I am talking about the time Montgomery caught up with the Italians. Could you see the three Italians and Montgomery?

A Yes, we could see them.

Q You could see them?

A Yes.

Q And that was about half-way down Lawton Road between Virginia Avenue and Wyoming Avenue?

Law Member: He didn't say that. The letter "N" on Lawton isn't down there.

Defense: He has been indicating further down.

Q Did you see what Montgomery was doing with his hands?

A I didn't.

Q You couldn't see?

A No.

Q Did he have them at his sides or waving them?

A I didn't look back.

Q Then you didn't see what happened at the time Montgomery caught up with the Italians?

A I just saw him run.

Q You never did see him when he caught up with them?

A No, I didn't.

Q All right. Why didn't you say so before.

Trial Judge Advocate: Those remarks, "Why didn't you say so before" are just an indication of a truculent manner of examining a witness. I think remarks of that kind should be stricken and I move they be stricken.

Law Member: They will be stricken.

Q You never did see with you own eyes what happened to Montgomery?

A No.

Q Well, to go back, did you go on back into the barracks?

A I stood up there.

Q Well, did you at any time later on go back into the barracks?

A Went into the barracks after we picked him up.

Q You went down to get him; carried him up to the barracks?

A Threwed at the Italians f first. After we throwed at them we picked Montgomery up and carried him in front of 719 barracks.

Q Put him on the ground or on the sidewalk?

A On the sidewalk.

Q Then did you go into the barracks?

A Not then. Later on I went in.

Q You went in there later on. Where was Luther Larkin at this time?

A Luther Larkin, he was down there feeling his pulse.

Q Did Luther Larkin Leave and go go into the barracks before you did?

A No, sir, he left before I did.

Q He went into the barracks before you did?

A Yes.

Q Did he say anything at the time he was going into the barracks?

A He was looking for a whistle.

Q Then he came back out of the barracks, did he?

A Yes.

Q You were still in front when he came out?

A Standing up there.

Q You were standing up in front of your barracks at the time he came out?

A Yes, sir.

Q With whom have you discussed your testimony in this case?

A With whom?

Q With whom have you discussed your testimony in this case?

A What do you mean?

Q Haven't you discussed this case with anyone?

A Discussed it by myself.

Q You never talked to anybody else about it?

A No, I never told nobody.

Q You never told anybody. Now, as a matter of fact do you recall being down in Major Manchester's office?

A Yes, sir.

Q Do you recall his bringing Luther Larkin in there?

A Yes, sir.

Q Well, didn't you tell Major Manchester in the presence of Larkin that you were upstairs in your barracks at the time just before the fight started and you saw Larkin come running upstairs--

A No, sir.

Q -- (Continuing and asked if anybody had a whistle?

A No, sir.

Q You deny that?

A Yes, sir.

Q Now, at any time during that evening did a Major come by your barracks there?

A That night.

Q That was after the fight was all over, wasn't it?

A Yes.

Q Do you remember when I talked to you down in Major Manchester's office a few days ago?

A Yes.

Q I will ask you if it isn't a fact I asked you the questions I am going to read here, to which you gave me the following answers: (Reading) "Q Who was on CQ? A I don't know. The ambulance came and picked up Montgomery and took him to the hospital, and then finally it was all over and I came on into the barracks. Larkin went on upstairs and Montgomery went to the hospital. I just got into bed without undressing, the 1st Sergeant came by and said the Major would be by. Q Was that Sergeant Gresham? A Yes, sir, he said the Major was coming by. Q How soon after Sergeant Gresham said that did

the Major come? A I couldn't tell you. Q Was it right away or 5-10 minutes? A I don't know for sure. Q You lay on your bed all the time until the Major came? A Yes, sir. Q What Major was that who came? A I don't know his name. Q Was it the Provost-Marshall? A I don't know. The Major went to look at Montgomery who had been brought back, and asked, 'Are you hurt?' and then the Major left. Q You never went back out of the barracks then? A No. Q Let me ask you this. You went into your barracks and got on your bed? A I did. Q and Larkin went on upstairs? A Yes, sir." Did you so testify to me?

A I told you what you asked me.

Q But the questions and answers I just read you, isn't that what you told me?

A Yes, sir.

Q And didn't I ask you the further question down there, "Q Have you ever been convicted of a crime in civilian life?" and you answered, "No, sir, I never have." Isn't that true?

A Yes, sir.

Q As a matter of fact, you lied to me at that time; you have been convicted of a crime, haven't you?

Trial Judge Advocate: If it please the Court, that sort of terminology I think is not to be used.

Law Member: I think the question is improper. Strike it out.

Q How long have you been in the Army, Daymond?

A Ever since the 11th of November, sir.

Q 11th of November of what year?

A 1944.

Q You mean last year?

A No, sir, this year. A little before Christmas.

Q You don't mean you just came into the Army a few days ago?

A No.

Q It must have been last year, wasn't it?

A Yes, sir, I guess so.

Q Now which is the truth, Daymond; were you in your barracks all the time or did you go down to the Italian area?

A I went down to the Italian area.

Q You went down to the Italian area?

A Yes, sir.

Q And what was your purpose in going down?

A They all left and I decided to go down there.

Q Were you armed?
A No, sir, I wasn't.

Q You didn't have a stick?
A No, sir.

Q You didn't have rocks?
A No, sir. I throwed one when they hit Montgomery and the Italian ran.

Q That is the only time you threw anything?
A Yes, sir.

Q Did you strike any Italians?
A No, sir, I didn't.

Q You didn't yourself at all?
A No.

Q What did you go down for; to participate in the attack or see what was going on?
A Just to go down there, sir.

Q Just to go down there and see what was going on?
A Yes.

Q Quite a number of other men went down there to see what was going on, didn't they?
A I don't know about them.

Q Didn't you see quite a number of them standing around not doing anything?
A I wasn't paying much attention.

Q You weren't paying much attention. Now, were you present there up in front of barracks 719 when Montgomery was taken away?
A Was I present? I left him on the sidewalk, I went on into the barracks.

Q Did you see Sergeant Gresham around there in front of the barracks when Montgomery was laying on the sidewalk?
A I didn't.

Q Quite a number of men came out of there?
A Yes, quite a number of them.

Q Well, who did you see out in front?
A I never looked up.

Q You never looked up at anytime?
A I was stooping down.

Q How long were you standing up there in front of 719 before you went down to the Italian area? How long were you standing out there?

A I wasn't standing out there. I went inside.

Q How long was it from the time that Montgomery was laid down there until they took him to the hospital?

A I couldn't tell you that.

Q 10 minutes, 15 minutes, half an hour? How long?

A I still couldn't tell you that. I don't know.

Q You don't know how long it was?

A No.

Q What was he taken to the hospital in?

A What was he taken in?

Q Did they take him in an ambulance?

A Yes, sir, an ambulance.

Q In an ambulance. Now, as a matter of fact, it wasn't an ambulance, it was a jeep, wasn't it?

A I don't know. I didn't see no jeep.

Q You want to tell the Court you saw an ambulance come down in front and take him to the hospital?

A I didn't see when he was brought in an ambulance.

Q Did you actually see him taken away at all?

A No.

Q No, you didn't see him at all, did you; you went back inside of the barracks?

A I did.

Q Where is your bed in those barracks?

A The bed is on the left-hand side going in.

Q On the lower floor?

A Yes, sir.

Q And what men did you see in bed when you went back in there?

A All was in bed.

Q All of them were in bed?

A The 1st Sergeant told us to go into the barracks. Finally we went on into the barracks. Later on Sergeant Gresham come by and said a Major would be by in a minute.

Q Well, that was after you went down to the Italian area, wasn't it?

A Yes.

Q I am talking about now before you went down to the Italian area. Did you go into your barracks then?

A Yes, I went into my barracks three or four times.

Q After Montgomery was laid down on the sidewalk out there did

you go into your barracks?
A Yes, I did.

Q And who did you see in bed there at that time?
A I didn't see nobody in bed there at that time.

Q You didn't see nobody in bed?
A I didn't go any further than the latrine.

Q You went into the latrine?
A I went into the latrine and came back out and stood in front of the door. Finally everybody down there and I went on down there.

Q After you came back out of the latrine and went out to the front of the barracks, who did you see standing around out in front?
A Who did I see? I saw a whole lot of soldiers.

Q A lot of soldiers?
A Yes.

Q Who did you recognize or identify as being out there?
A They were all scattered out.

Q Out in front of the street?
A Yes, scattered out.

Q Who did you see out there?
A I couldn't tell you who I saw.

Q You can't remember anybody you saw?
A No, I can't.

Q Now, when you went down to the Italian area did you follow along this road, Lawton Road, or did you cut across this lot by the mess hall?
A Yes.

Q You cut across the lot by the mess hall?
A Yes.

Q Where did you go to when you first went down; where was the first place you stopped?
A Stopped on the hill.

Q On the hill behind the mess hall?
A Yes.

Q That is on the Italian area end of the mess hall?
A Yes.

Q Were other soldiers standing there at the same place you were?
A I didn't see none.

Q You were alone standing at the end of barracks 700?

A I was.

Q At the time you got to the end of barracks 700 were there men down in the Italian area?

A There was.

Q How many?

A I don't know.

Q 10, 15, or 20. or approximately how many?

A A gang of them.

Q A gang of them had gone down ahead of you?

A Yes, sir.

Q Were there more still coming?

A I didn't see none behind me.

Trial Judge Advocate: I don't see how the Court can possible hear these answers. (To witness) You are going to have to speak out loud and turn around when you answer a question so the Court can hear it.

Q You weren't armed at all?

A No.

Q You never did have a stick?

A No, I didn't.

Q Never had anything?

A No.

Q You didn't go down there with any intention of harming the Italians at all?

A No.

Q Now, as you stood at the end of Building 700 did you see any more colored soldiers going down past you and into the area?

A No. Not in that direction where I was going there I didn't see anybody.

Q How many colored soldiers would you estimate were in the Italian area at that time?

A Lots of them.

Q Well, was it a hundred, two hundred, fifty, or about how many? I know you can't give me the exact number; I am not asking that.

A I couldn't tell you that.

Q Well, there were seven or eight hundred colored soldiers down in this area, weren't there?

A I don't know.

Q Well, there was three companies, weren't there?

A That was moving in there?

Q Were they all down in that area?
A All of them?

Q All of the colored soldiers?
A I wouldn't say all of them was down there.

Q Well, was there as many down there as there are in your Company?
A Quite a few of them down there.

Q You know how many men you have in your Company, don't you?
A I don't know.

Q You don't know how many in your Company?
A No, sir, I don't.

Q Well, would you think there was as many as 200 men down there
A in the area that evening that you saw?
A Do I think that many would be down there?

Q Yes.
A I wouldn't say that.

Q You wouldn't know that. How long did you stand by the end of
the mess hall?
A I stood there for about a second.

Q Just a second?
A Yes, when I went down into the area.

Q What was the purpose of your standing there?
A I just stood up there, that's all.

Q For what reason?
A I didn't have no reason.

Q No reason at all. You weren't up there searching for some kind
of a weapon?
A No, I wasn't.

Q Then when you went on down into the area, where did you go?
A I stood on the side of the orderly room.

Q Well, which side of the orderly room? On the side the door was
on or on the other side?
A On the other side.

Q On the opposite side. There wasn't any door there where you
stood?
A Yes, there was a door. You can look through it.

Q How far were you from the door?
A A little bit further than from here to that thing over there
(pointing).

Q Well, step off and show us about how far you were. Start out

from where I am standing here.

A About this far (pointing).

Q From there over to the base over there?

A Yes, sir.

Q About 15 feet, you think?

Trial Judge Advocate: About 12 feet.

A About 12.

Q Well step off the number of paces.

Trial judge Advocate: It is about 12 feet.

Q How many paces?

A 5. (Witness paces off distance previously indicated.)

Q And how long did you stand out there?

A I stood out there a pretty good while.

Q Did you move around any or were you standing right in that one spot?

A I stood there.

Q What?

A I stood there, sir.

Q You stood there?

A Yes.

Q Without moving?

A Yes, sir.

Q Now, up to this point had you seen anybody you knew?

A Yes, sir, I had.

Q You had seen people you knew there?

A Yes.

Q Who did you see?

A I saw Gresham.

Law Member: What is that name?

The Witness: Bob Gresham.

Q Robert Gresham. What was he doing?

A He was standing in the orderly room talking.

Q He was inside the orderly room?

A Yes, sir.

Q At the time you saw Gresham had the M.P.'s arrived yet?

A I don't know when they arrived. Some of them came out of the

orderly room bringing them out.

Q Well, at the time you got down there the M.P.'s had already arrived, had they?

A They were already down there when I saw them.

Q In other words, when you got down outside the orderly room, which is building 713, the M.P.'s were in the building?

A Yes, sir.

Q There wasn't any more fighting going on was there?

A No, sir, there wasn't.

Q And Gresham is the first man that you recognized down there?

A Gresham, and King, Barber.

Q You saw them down there after the M.P.'s had arrived?

A Yes, they arrived and was already down there when I got down there

Q Then the M.P.'s were already down there?

A Yes.

Defense: That is all.

President: Any redirect examination?

Trial Judge Advocate: Just a question or two.

Law Member: How do you spell that name Gresham?

Trial Judge Advocate: G-r-e-s-h-a-m.

Law Member: He is not an accused?

Trial Judge Advocate: No, sir.

REDIRECT EXAMINATION

Questions by the Trial Judge Advocate:

Q Private Daymond, I don't know that I asked you this on direct examination. Were the lights on in the orderly room building 713, at the time you were down there?

A Well, they was down in the orderly room

Q They were on in the orderly room?

A Yes, sir.

Q State whether or not the reflection from the light would cast through the doors and through the windows of the orderly room.

A You could see from the inside where the M.P. was. Light from that room reflects out too.

Q Do you mean by that you could see the folks on the inside?

A Yes, sir.

Q And do you mean also that there was or was not a reflection of the light through the doors and through the windows?

A You could see them through the windows, yes sir.

Q I believe you testified that at that time the M.P.'s had arrived?

A Yes, sir.

Q And you mentioned about a Sergeant Gresham being there and about a Corporal King being there?

A Yes, sir.

Q Do you know how it happened Sergeant Gresham and Corporal King were there?

A No sir, I don't.

Q You don't know whether they were there of their own volition or came with someone else?

A No, sir, I just saw them there.

Q You just saw them there?

A Yes, sir.

Q Now, you have talked with me about your testimony in this case, have you not?

A Yes, sir.

Q I have asked you questions about it?

A Yes, sir.

Defense: I object to Counsel leading the witness. He has already denied--

Trial Judge Advocate: I thought you were interested in it.

Defense: I am interested in your proceeding in a proper manner. You know the way as well as I do to proceed in these cases.

Trial Judge Advocate: Now, if it please the Court, I don't propose to take a lecture from Counsel as to whether I proceed correctly or not. If he has an objection to make I suggest he make it to the Court.

Law Member: I think in the future you should address your remarks to the Court, Major.

Defense: I should be glad to do that, but I submit the first off-the-record remark was made by Counsel.

Trial Judge Advocate: Now, I will be glad to go into the testimony fully along the lines that I have just begun, but actually I thought Counsel was interested in taking a direct approach to it.

Law Member: As for your last question Counsel, I believe the Court will take judicial notice of the fact that you question

your witnesses before you put them on the stand.

Trial Judge Advocate: All right. Thank you, sir.

Q And have you or have you not talked with Major Becks, the Defense counsel?

A Yes, I have talked with him.

Q And did he or not have a stenographer present who was taking down your testimony when you talked to him?

A Yes, sir.

Defense: I still submit Counsel is doing all the testifying. He is putting the answers right in the witness' mouth.

Trial Judge Advocate: I asked him did he or not have someone present, whether there was or wasn't someone present.

Law Member: The objection is overruled.

Q Will you answer the question, please?

A Yes, he was.

Q Now, you have named about five accused whom you saw down there in that area the night that this incident occurred?

A Yes.

Q State whether or not you saw more than five people there; not people you could identify, but did you not see more than five people there that night?

A I saw lots of them, sir.

Trial Judge Advocate: That is all, if it please the Court.

Defense: I neglected to ask the witness about one matter. I would like to reopen my cross for that purpose.

Law Member: Subject to objection by any member of the Court the request is granted.

President: Apparently there is no objection.

FURTHER CROSS-EXAMINATION

Questions by Defense:

Q You mentioned a conversation you had with Coverson. Where did that conversation take place?

A What kind of conversation?

Q Didn't you testify on direct examination a few moments ago that you had a conversation with Coverson?

A I asked him about William Cunningham. That was all.

Q Didn't you after this right was all over, didn't you have some conversation with him at some time or other?

A I didn't.

Q You never had any with him?

A No, sir, I didn't.

Q At any time?

A Not that night.

Q Well, did you later?

A I can't recall now. I don't hink so.

Defense: That is all.

REDIRECT EXAMINATION

Q Did you ever hear the accused James Coverson make any comment with respect to having been in the Italian area?

A Yes, I do.

Q Now, was that a conversation with you or did you hear him make a comment?

A I heard him make a comment.

Q And what was it he said?

A That he had beat one of those Italians unmercifully.

Q Was he talking to a group, or individually, or who?

A Talking to a group of us.

Trial Judge Advocate: That is all, if it please the Court.

RECROSS-EXAMINATION

Questions by the Defense:

Q At the time you talked with Major Manchester about that remark did you tell him the same thing, that the remark that you heard was that he had beaten up an Italian unmercifully?

A Did I tell him that?

Q Yes.

A I did.

Q You gave him those very words?

A Yes, sir.

Defense: That is all.

President: Do any members of the Court have any questions?

EXAMINATION BY THE COURT

Questions by Major Crocker:

- Q When the fight was going on you were standing at the end of building 700, is that right, the mess hall?
- A When it was going on?
- Q When the fight was going on.
- A It was over when I went down there.
- Q All right. When you were standing at the mess hall looking over that way, what was happening then?
- A Lots of them was coming back. That was all, coming back.
- Q Were you standing then when you saw Shelton in the road?
- A No, sir, that was after. That was the first when I saw Shelton.
- Q You stated that you saw Barber?
- A Yes, sir.
- Q Down near the orderly room, is that right?
- A Yes, sir.
- Q And where were you when you saw him?
- A I was walking over that way, that direction, to him.
- Q Had you left the mess hall to go down to the orderly room?
- A Yes, I passed the mess hall, I went behind the mess hall, and went across the hill.
- Q When you saw him down at the orderly room you were down there too were you?
- A Yes, I was down there.
- Q And the M.P.'s were already there?
- A Yes, they were when I saw them.
- Q When you saw Frank Hughes, you saw him in the orderly room?
- A Yes, he was coming out the front door.
- Q And you were down there too?
- A Yes.
- Q And the M.P.'s were already there?
- A Yes, sir, they was there when I saw them.
- Q Was that when you saw a knife in his hand?
- A Yes.

Major Crocker: No further questions

Questions by Lt. Colonel Stecher:

- Q It is not clear in my mind, Daymond, when the whistle blew and a certain number of men formed how many men there were. Approximately how many?
- A About--when they was going down there?

Q That's right. When the whistle blew and you formed.

A We didn't make no formation.

Q I know, but they scrambled together. How many men?

A Oh, about 8-9 of us.

Q 8 or 9 of us?

A Yes.

Q You said five or six went on down in the direction of the Italian area. Did they go ahead of the crowd?

A That was the first group went down there.

Q That was the first group. There were two groups. You said you cut across by the mess hall. Where did this bigger group-- how did they move to the area?

A They were going on the Lawton Road.

Q They followed Lawton Road?

A Yes.

Q You didn't go with them?

A No, sir, I didn't.

Q You cut across by the mess hall. All right, Daymond. You say you saw Shelton strike with a stick. Where were you at that time?

A I was standing on Lawton Road.

Q On Lawton Road?

A Yes.

Q Where was Shelton at that time?

A He was down the hill sir.

Q He was where?

A Down the hill. Down the street; down the hill like.

Q Was that in the Italian area?

A Yes, it was going down in that area.

Q Whom did he strike?

A One of the Italians.

Q One of the Italians?

A Yes.

Q Was that in among the buildings? Was that right in the area? Where was this where you saw this strike? Just point out to me where, about where.

A Right along up in here sir, sir (indicating on Prosecution Exhibit 2).

Q Right along there?

A Yes.

Law Member: Just a minute. You are pointing to the inter-

section of Wyoming Avenue and Lawton Road, is that right?

The Witness: This way you go down(indicating).

Law Member: And you see Wyoming Avenue going north and south?

The Witness: Yes.

Law Member: Right at the interseccion is where you pointed?

The Witness: Right over in here somewhere (indicating on Prosecution Exhibit 2).

Q How many Italians at that time?

A When Shelton struck him? I didn't see but one.

Q You only saw one. What was that one Italian doing there?

A He was stooping down.

Q How far was he from his barracks would you say?

A A pretty good ways from the first barracks.

Q I wonder how he got down there?

A He run down there. The Italian run up there. He was bending down.

Q Just one more question. Did you see Coverson in the Italian area?

A No, sir, I didn't.

Q You did not see him in the Italian area?

A No, sir.

Q Who was in the orderly room at the time you saw Hughes with a knife in his hand?

A Well, I saw David Walton.

Q Were there any Italians in the orderly room?

A One of them ran out the orderly room. He was behind the bed; he was behind the door. He was all covered up and finally somebody opened the door and he run out.

Q No one else in there?

A No.

Q No Italians?

A No, that is all I saw.

President: Any further questions? If not, the witness will be excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: If the Court please, this next witness is going to be a long one. However, I do have one matter

that won't but take just a minute that I might attend to before I call the next witness. I would like to offer in evidence a communication from the convening authority granting immunity to the witness Roy Daymond who has just testified. May I read it to the Court?

Law Member: That will be Prosecution Exhibit 7.

Trial Judge Advocate: Yes, Prosecution Exhibit 7.

The grant of immunity to Private Roy Daymond was then marked Prosecution Exhibit 7 in evidence and was read to the Court by the Trial Judge Advocate:

President: The Court will take a recess until 3:00 o'clock.

The Court thereupon recessed at 2:45 p.m., and reconvened at 2:00 o'clock p.m., 20 November 1944.

President: The Court will come to order.

Trial Judge Advocate: Let the record show the personnel of the Court, personnel of the Defense, the accused, and personnel of the Prosecution all were present.

The reporter was also present.

Sergeant Grant Noel Farr, SCU 3983, 28th Italian Quartermaster Service Company, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

- Q Please state your name, grade, your organization and your station
A My name is Grant Noel Farr, and I am a Sergeant. I am assigned to SCU 3983 and attached to the 28th Italian Quartermaster Service Company at Mt. Rainier Ordnance Depot, Tacoma, Washington.
- Q With what organization were you, Sergeant, on August 14, 1944?
A At that time I was assigned to SCU 7909 and attached to the 28th Italian Quartermaster Service Company at Fort Lawton.
- Q You were stationed at Fort Lawton, Washington. And how long had you been assigned to that particular organization?
A To which one, sir?
- Q To the one when you were stationed at Fort Lawton, the 28th Quartermaster Italian Service Unit.
A I joined the Italian Service Company in Florence, Arizona on the first of May.

Q 1944?

A Yes, sir.

Q Now, Sergeant, do you recall the evening of August 14, 1944, that there was something unusual happened in the Italian area at Fort Lawton?

A Yes, sir, I do.

Q Where were you at that time?

A I was in building 713.

Q Is that what is commonly known as the orderly room?

A Yes, sir.

Q And what were you doing?

A I was in bed, sir.

Q Did you hear taps that evening?

A Yes, sir, I did.

Q Had you fallen asleep after taps?

A I was dozing.

Q About how long after taps was it before this unusual matter took place?

A I would estimate 15-20 minutes.

Q What first attracted your attention to the fact that something of an unusual nature was occurring?

A I heard a roar coming from the immediate area. It was not in the Italian area but in the 700 area at Fort Lawton.

Q All right. And did anything happen after that that attracted your attention to something of an unusual nature occurring?

A Not immediately, sir.

Q Well, about how long after?

A Approximately a minute or two.

Q And what was that?

A I was awakened by two or three Italians running into the orderly room and calling me.

Q Calling you. Do you remember any one of them, know the name of any of them Italians?

A Yes, sir, I remember one.

Q Who was that?

A His name was Luigi Furlanelli.

Q Did you thereafter take any action?

A Yes, sir, I did.

Q What did you do?

A Well he informed me that Negro soldiers were going through his barracks. I immediately arose from bed and partially

dressed and went to the telephone.

Q And whom did you call, if anyone?

A I first dialed the number listed for the officer of the day at the night phone.

Q Did you receive any answer there?

A No, sir, there was no answer.

Q Did you take any action after that?

A Yes, sir. I then phoned the guardhouse.

Q Did you report to them that there was something taking place that required their attention?

A Yes, sir. I identified myself and told them that colored troops were in the area and that we needed help down there.

Defense: I don't like to needlessly object to hearsay testimony. I think Counsel ought to try to restrict his questions there and not have the witness describe details about conversations he had with other people. That is clearly not proper.

Trial Judge Advocate: It is part of the res gestae. He is merely reporting the occurring of the incident. I think it is part of the res gestae.

Defense: I don't consider it part of the res gestae and I am objecting to it as hearsay.

Law Member: Overruled. It occurs to me that the incident is now in progress and that any remarks made during the course of the incident are not hearsay but are admissible as part of the res gestae. Accordingly, your objection is overruled.

Q Now thereafter did anything take place with respect to the orderly room itself?

A Yes, sir.

Q What was that?

A After I hung up the telephone the building was besieged. That is, I was aware rocks were being thrown and hitting the outside of the building, and also at that time there were some rocks that had entered the front door to the building.

Q Did you see some of those rocks?

A Yes, sir, I did.

Q What type were they? Sergeant?

A Well, the rock that I took particular notice of was a construction brick.

Q A construction brick. Did any persons enter the orderly room?

A Not at that time, no sir.

Q Did you see any persons -- did you go to the window or to the door and see if there were any persons around the vicinity of the orderly room?

A No, sir, I didn't.

Q Allright. How long was it before any, or did thereafter anyone enter the orderly room?

A Yes, sir, they did.

Q About how long after?

A The door through which the rocks had been thrown had been closed but was opened approximately 2-3 minutes later by colored soldiers.

Q Did they enter after opening the door--enter the orderly room?

A Yes, sir, they did.

Q Were they armed in any way?

A I saw at that time a club and rocks.

Q And rocks. About how many entered the orderly room at that time; about how many colored soldiers?

A I would say five or six.

Q Will you step up here please, Sergeant. This map, which is Prosecution Exhibit 3, gives the floor plan of building 713, the orderly room. There has been some arbitrary designations made. Here is room R, room X, room Y, room Z. Here is door E and door A. Now, through which door did these colored soldiers enter?

A I was in room X at the time they entered through door d.

Q And you say there were five or six of them?

A Yes, sir.

Q All right. Will you tell the Court what they did, if anything?

A When the rocks had been thrown the Italians who were in room X immediately ran into room Y.

Q About how many Italians were in room X?

A I would estimate 20-25.

Q Italian soldiers?

A Yes, sir.

Q How did it happen that there were that many of them in room X?

A They had come to building 713 presumably because they thought it would afford some safe wspot for them.

Q State whether or not then after you first heard this noise a number of Italian soldiers came into the orderly room from the time you first heard the noise attracting your attention to something unusual?

A Yes, sir, they did.

Q How were they dressed? By that I mean, were they all fully dressed?

A No, sir, they were not.

Q Give the Court some idea on that.

A Most of them were very partially dressed. Several of them only were in underwear, some of them managed to slip on trousers, shirts, and there were a few field jackets also.

President: How many would you estimate came in altogether?

The Witness: I would estimate 20 to 25, sir.

Q And where did most of them go, Sergeant?

A Well, most of them entered room Y. Some of them entered room Z also, but most of them entered room Y.

Q Any of them stay in room X?

A Some of them, yes, sir.

Q All right. Now let's take these 5-6 colored soldiers you say entered the orderly room. Will you describe to the Court their actions; just what, if anything, they did after they entered the orderly room; where they went and what, if anything they did?

A Well, sir, the most of them as they entered the orderly room were staying pretty much to this end of the room, room X. However, I saw no one enter room Y but I heard several cries coming from that room, cries of pain, and I presumed some of them got into room Y.

Q What did you see those in room X do?

A One man in particular threw a rock, a construction brick as nearly as I can tell, sir?

Q Yes; and at whom did he throw it?

A He threw it at me, sir.

Q Were you able to duck in time to avoid it?

A Yes, sir, I did.

Q Did it hit anyone?

A Not to my knowledge, no sir.

Q All right. Can you tell the Court anything else that this group of 5-6 that first entered did?

A Most of the men in the group were shouting and yelling. However, I was unable to make out the general gist of the conversation; but after a few moments they withdrew from the room.

Q Left the orderly room and went to the outside?

A Yes, sir.

Q All right. What happened then? Sergeant?
A At that point the front door, or door D, was closed and latched with some sort of appliance. I don't know what it was. There was no building latch on the door. The only facilities available were two arms through which you dropped some sort of board.

Q All right. Did that door remain barricaded?
A Yes, sir, it did.

Q For how long?
A Until it was chopped down, sir?

Q Well, how was it chopped down?
A It was chopped down with an ax.

Q Did you see the size or the ax that was being used?
A Yes, sir, I did.

Q How did you know it was an ax?
A I saw the ax blade come through the door, sir.

Q You saw the ax blade come through the door?
A Yes, sir.

Q Did it strike anyone?
A No, sir.

Q Was anyone close to it who was almost struck by it?
A Not to my knowledge.

Q All right. Now was the door then completely chopped down or did it remain closed?
A I don't know whether or not the door was completely chopped down. At some later date entry was made into the room. I didn't notice at the time whether the door was completely chopped down.

Q Well, after it was being struck with an ax did or not anyone make entry into the room through that door?
A Yes, sir, they did.

Q Now, we are talking about door D, are we not?
A That is correct.

Q Now who made entry through that door after this chopping took place?
A Several colored soldiers.

Q About how many entered room X through door D?
A Well, sir, I couldn't say for sure. I couldn't even estimate it, sir.

Q We are speaking now of this large group you spoke of?
A Yes.

Q Would you say as many as ten came through?

A Yes, sir, I would say that.

Q Would you say as many as fifteen came through?

A I don't believe so, no, sir.

Q Where did you go, or where were you standing or sitting -- where were you when they came through door D?

A When they entered through door D I was attempting to aid Sergeant Perata, an American staff sergeant, who had been injured in the first attack and was laying along this wall here (indicating on Prosecution Exhibit 3).

Q Did you see how Sergeant Perata was injured?

A No, sir, I did not. He was laying on the floor bleeding badly, and that was all I know.

Q And you were there attempting to aid him. Well, did you have occasion to observe any actions of the colored soldiers who came through --this last group that came through?

A Well, as they broke through the door I withdrew back further into the room in this manner (indicating on Prosecution Exhibit 3). Earlier in the evening I had also locked door E by a wire latch that was on it, but by that time door E had also been forced

Q Sergeant, how many American soldiers, white American soldiers, were there in that orderly room on that evening when the attack took place?

A There were two of us sleeping there.

Q Can you name them?

A Corporal Haskell and myself used building 713 as sleeping quarters.

President: What was his name? Haskell?

The Witness: Corporal Haskell, yes, sir.

Trial Judge Advocate: H-A-S-K-E-L-L, sir.

A So Sergeant Perata and Pfc Gould were sleeping in a tent adjacent to the room in approximately this position (indicating).

Q Well, let's look at Prosecution Exhibit 2, and here is the orderly room on that exhibit. Was this the tent you have reference to (indicating) ?

A Yes.

Q The tent that is just to the right of ther orderly room.

Law Member: It is marked "tent"?

Trial Judge Advocate: Yes, sir, it is marked "tent".

- Q Well, did either Staff Sergeant Perata or Pfc. Gould come into the orderly room that night?
- A Yes, sir, Sergeant Perata came in shortly before the first attack was launched.
- Q I may have asked you this, I am not sure, but did you see how he was injured?
- A No, sir, I didn't.
- Q But you saw him bleeding, I think you said, and you went to his aid?
- A Yes.
- Q Now tell the Court after this group of soldiers broke through the door and came in there whether you had occasion to advise them who you were and who Sergeant Perata was and Corporal Haskell was. Did you have occasion to mention that?
- A Yes, sir, we did.
- Q And once or more than once?
- A More than once.
- Q And how did you go about doing that?
- A We told them we were American soldiers.
- Q Did you just speak softly or will you tell the Court how you said that?
- A No, sir, we were shouting that we were American soldiers.
- Q Were they close to you when you shouted that to them?
- A Yes, sir, they were.
- Q Well after you shouted that was anything done to show any respect for the fact that you were American soldiers?
- A No, sir, there was not.
- Q Well, what did they do after that?
- A After door E had been forced, the colored soldiers were entering room X through both door D and door E. I took the position about here in the room in order --
- Q Wait a minute. That is about the middle of room X?
- A Yes, sir, about the middle of room X, in order to observe both doorways. The soldiers, the colored soldiers, I had noticed were packed into an aisleway that extended from door A to door D in room R, and they were also closely packed into this aisleway here in room X.
- Q Room Z, isn't it?
- A Room Z.
- Q Allright.
- A The men in front would come up to the doorway and they would stop, apparently knowing what they might encounter inside. However they would be pushed on inside by the men behind them.

Q How were those men armed, Sergeant Farr?

A I observed rocks, I observed clubs, and I observed a knife.

Q All right. Now proceed with your story there and tell us what occurred next in that orderly room?

A The next few minutes were devoted almost entirely to defending ourselves, those in room X, and at some point during the evening I was recognized by one colored soldiers as being an American soldier. He then said, "You come with me; we are not after you." He took me by the arm and led me to door D. I am not sure whether he preceded or followed me through door D into room R, but he did secure my exit from the building through door D and door A, down the stairs to an area immediately in front of the stairs. Approximately here (indicating).

Q Were there any colored soldiers in that area just approximately in front of doorway A?

A Yes, sir, there was.

Q Well, tell the Court what you experienced in connection with gaining further exit through those soldiers?

A As soon as I alighted from the stairway I was immediately surrounded by several colored soldiers who were in the area, and who were armed with clubs and rocks, and they were attempting to assault me. However, the escort who had taken me out of the room assured them that I was an American soldier and that they did not want me, and he was able to quiet them down sufficiently to allow him to take me from this area in front of door A to the area in door E.

Q Now, when you were in room X I believe you have testified Staff Sergeant Perata, Corporal Haskell and you were all three in that room together. Is that correct?

A Yes, sir.

Q Did you have on Sergeant's stripes?

A No, sir, I did not.

Q Did Corporal Haskell have his on?

A Yes, sir, he had his stripes.

Q Do you recall whether Staff Sergeant Perata did?

A I don't believe he did, sir.

Q Then after you were taken from the orderly room as you have described, will you tell the Court where you were taken to next; where you went or what you did?

A By the time we had reached door E, that is, my escort and I had reached door E, he secured one or two other colored soldiers-- I am not positive of the number -- but this one or two others accompanied my original escort and myself through the area, around the adjacent to barracks 709, and we proceeded through the area around barracks 710 and up a stairs which went over an embankment which ran along Wyoming Avenue here, and after climbing those stairs we

proceeded over to approximately the PX on Virginia Avenue, and turned right at that point and went on down Virginia Avenue to, I believe it is, Lawton Road that comes down here (indicating). It is approximately a junction with Lawton Road and Virginia Avenue, where I was left by my escort and told that I would be all right from here on.

Q All right. Now, did you have occasion to pass through any lines of colored soldiers before you got to that point?

A There were considerable colored soldiers in the area at the time. However, I was particularly impressed by what I thought was a line running along the top of the embankment. There were several flashlights in evidence. There was a man at the top of the stairs through whom my escort cleared me by saying, "He is an American soldier; he is all right."

Q Sergeant, did you sustain any injuries that night?

A Yes, sir, I did.

Q Will you tell the Court how you were injured?

A I sustained a knife wound in my upper left arm, which penetrated through the arm. I also had a knife wound in the left hip and groin.

Q Was that a deep wound?

A Yes, sir, it was.

Q How long were you in the hospital?

A I was in the hospital until September 3rd.

Q From August 14th until September 3rd?

A Yes, sir.

Q Sergeant, were you asked to attend a show-up of colored soldiers for the purpose of picking out such colored soldiers as you saw at the time of this incident?

A Yes, sir, I was.

Q Were you able to pick out the man, the colored soldier, that took you on through from this area from the orderly room and on to the hill as you have described?

A No, sir, I was not.

Q Were you able to pick out the man whom he turned you over to?

A No, sir, I wasn't.

Q Sergeant, at the time that you were walking from the orderly room had you already been wounded?

A Yes, sir, I had.

Q Now were you also in connection with the show-up of these colored soldiers asked to identify any of whom you saw in the orderly room?

A Yes, sir, I was.

Q Were you able to identify some of them?

A Yes, sir.

Q Did you know any of them by name?

A No, sir, I did not.

Q Sergeant, I want you to walk over there, take your time, and look over the accused and point out anyone that you saw in the orderly room; that you saw that evening in question, and after you have pointed them out, then I wish you would tell the Court what you saw that particular soldier do.

A This man here (pointing to one of the accused).

Q This man here (indicating one of the the accused).

President: Will the counsel for the defense please stand out of the way of the Court?

Defense: Oh, I am sorry.

Q Let's do this again. Point out the first man.

A This man right here (pointing to one of the accused).

Q All right.

A And this man here (pointing to one of the accused).

Q All right.

A And this man here (pointing to one of the accused).

Q Point to him again.

A This man here (pointing to one of the accused).

Q All right. Those are the three you saw on the night in question?

A Yes, sir, they are.

Trial Judge Advocate: Now, if it please the Court it is the position of the prosecution that the Court has a right to know the name of those accused, and this morning at another time counsel for the defense refused to stipulate as to who the accused were. I want to advise the Court that in my opinion the Court has the absolute right to inquire as to who those accused are, the Court is entitled to know at all times the identity of each accused that is in the courtroom, and there is actually considerable latitude given a court-martial with respect to matters of that general nature. If I may, although I don't know, the Law Member may not care for me even to go into it further, but I just wanted to call attention of the Court to the provisions of the Manual on page 130, paragraph 122b

The Trial Judge Advocate then read from paragraph 122-b, page 130, Manual for Courts-Martial, U.S.Army.

Trial Judge Advocate: If it please the Court, this is an exercise of an act not nearly so strong as the Manual authorized, and I think the Court is entitled and I will ask the Court to have the colored soldiers who have been identified stand up and give their names.

Law Member: I so order.

Q Sergeant Farr, the first one again.

A This one here (pointing to one of the accused).

Law Member: Stand up and give us your name.

The individual indicated by the witness then arose and announced his name as follows: Private First Class Roy L. Montgomery.

Q Will you tell us what you saw this man do?

A This man was standing at door E, I believe, in the side entrance to room Z.

Q Was he armed with anything.

A I saw no weapon, no, sir.

Q I beg your pardon?

A I saw no weapon.

Defense: Door E, did you say Sergeant?

The Witness: Yes, sir.

Q This side door, was it?

A No, sir, door B.

Q Door B?

A Yes, sir.

Q All right, Sergeant, please come with me. I believe this was the next accused you identified, wasn't it (pointing to one of the accused)?

A Yes, sir.

Law Member: Will you stand up and give your name?

The individual indicated by the witness then arose and announced his name, as follows: Technician 5th grade Leslie T. Stewart.

Q Now, what, if anything, did you see Corporal Stewart do?

A He was also standing at door B. He was armed with a knife.

Q He was armed with a knife. All right. Now, there was another man that you pointed out. Will you point him out again?

A Yes, sir. (Indicates one of the accused.)

The individual indicated by the witness then arose and

announced his name, as follows: Private Richard Richard Sutliff.

Q And, Sergeant, where did you see him or what did you see him do?

A He was in room X and he was the man who threw the rock at me.

Q He was the man that threw the rock at you?

A Yes, sir.

Q And that you were able to duck?

A Yes, sir.

Q All right. Will you have this chair just a minute. Sergeant. Now Sergeant Farr, was there a light on in the orderly room during the entire time of the events that you have described to the Court?

A Yes, sir, there was.

Q Where was that light?

A There were two lights on in room X. One was at the far end of the room, I believe it would be the southwest end of the room, and there was one approximately in the middle of room X.

Q Well, will you step up to the map so the Court can see where exactly these lights were on.

A There was one approximately here and there was one here (indicating)

Q Let's mark them, please by an "X".

Law Member: How about a circle?

Q All right, I will put a circle and "light" next to it. Now, Sergeant, can you give the Court some idea of the type of globes that were used in that room?

A Yes, sir, they were large bulbs. I would say 150 to 200 watt.

Q All right. Now there appears on this plat, Prosecution Exhibit 3 what may be described as a partition running from room X to room Y and room X to room Z. Do these partitions go all the way to the ceiling?

A No, sir, they did not.

Q Well, about how high from the ceiling or what distance from the ceiling did they stop?

A 6 feet.

Q All right. Now, there is an entrance way here marked "C" with a circle around it, between room X and room Y. Was that always open?

A Yes, sir, it was. There was no door on that entrance.

Q Was this door B open the night in question, the door between room X and room Z, or was it closed?

A It was open.

Q And door D you have told us about?

A Yes.

Q Did you have occasion to walk into room Y at the time of this incident?

A No, sir, I didn't.

Q Could you see into room Y from where you were?

A Yes, sir.

Q Do you know whether or not there were any Italian soldiers in Room Y?

A There were.

Q One or more, or about how many would you say?

A I would estimate ten.

Law Member: That is Italian soldiers?

The Witness: Yes, sir.

Q Now, Sergeant, will you step over here and look over the exhibits and see if you recognize any sticks or clubs, or any knives, of the type that were used on the occasion in question.

A I saw a club like this (indicating).

Q All right, let's have it.

A I saw a club like this (indicating). I saw a brick like this (indicating) and then a knife I saw was a knife like this kind (indicating).

Q The knife you saw was of this kind. Was that the knife you say was in the possession of the accused Stewart, as you testified, or a different knife?

A I don't know, sir.

Q But say the knife you saw was of this kind. Was the knife you are speaking of the knife you saw in his hand or do you mean a knife you saw some time during the night?

A No, sir, the knife in his hand was of that type.

Q Did you see anything else you saw on the evening in question?

A No, sir.

Q Do you see the ax that was used to chop the door down?

A No, sir.

Trial Judge Advocate: If it please the Court, I think it is material for the Court to feel the weight of some of these weaponies. I want to offer these in evidence and ask permission of the Court to withdraw them at the close of the case. I am sorry they are not clean.

Q How many colored soldiers did you see on the outside?

Law Member: Are you going to offer these in evidence?

Trial Judge Advocate: Yes, sir, I am offering them.

Law Member: No objection, I take it, Major?

Defense: Yes. I don't think they have been sufficiently identified at this stage of the proceedings.

Law Member: They are not supposed to be that brick, that club, or that knife seen there that night.

Trial Judge Advocate: That is correct:

Law Member: But similar to the ones used, and it is with that understanding that the exhibits are admitted in evidence.

Defense: There has been absolutely no testimony at all that these clubs were used by any particular individual or under any circumstances. No indication that the knife was used. I think, perhaps, there is some testimony a brick similar to this was used. In the absence of there being some specific identification as to the use that has been made of those exhibits and those being specific weapons used, the Defense objects to their admission.

Law Member: If these exhibits were offered as being "the ones", your objection would be well taken, and if it was to be considered they were to be considered as the actual implements there that night, your objection would be well taken; but this witness said he saw a club similar to the light colored one, a club similar to the green one, a knife similar to the knife on the accused Stewart, and a brick was thrown at this witness similar to the brick offered in evidence. The objection is overruled.

A white stick was then received in evidence and marked Prosecution Exhibit 9, a green stick was received in evidence and marked Prosecution Exhibit 9, a brick was received in evidence and marked Prosecution Exhibit 10, and a knife was received in evidence and marked Prosecution Exhibit 11.

Q Sergeant, at the time that you left the orderly room and were being escorted through a group of colored soldiers, about how many colored soldiers did you say you saw in that area? I am getting away from the orderly room; not those in the orderly room, but those on the outside.

A I would estimate 25 at least were in the group outside of the orderly room; outside door A, I believe, was the door, the front door of the building.

Q Was there some more further away from there?

A Yes, sir, there were. There was equally that number at

least by door E, the side door, I believe, of the building.

Q And how many would you estimate were inside the orderly room?

A Well, in room X I wouldn't be able to estimate with any degree of accuracy; because I only saw them come in from the one door. However, I presume they were entering from the side door also.

Q Was the incident still in progress when you left the orderly room and were taken away by one of these soldiers?

A Yes, sir, it was.

Q And you don't know how long it lasted after you left, of course?

A No.

Q How long was it from the time that you first heard the noise in the area and the time you tried to call the M.P.'s until the M.P.'s arrived?

A I didn't see the M.P.'s actually arrive in the area.

Q Oh, yes, that's right; you didn't. I will alter that question this way. How long was it from the time you first heard this noise and called until the time you left the orderly room?

A Twenty minutes, I would say.

Law Member: How many?

Trial Judge Advocate: Twenty minutes.

Q Was Corporal Haskell still there when you left the orderly room?

A I didn't see the Corporal, sir. I presume that he was there.

Q Did you see Sergeant Perata?

A Sergeant Perata was on the floor.

Q Was he bleeding?

A Yes, sir, he was.

Q Now I want you to describe to the Court, please Sergeant, the appearance of these colored soldiers as they came into the orderly room. By that I mean the clothes they were wearing and generally their appearance.

A Well, sir, the clothes were of different types of military clothing. There were o.d.'s, there were suntans, and there were fatigues. However, the faces of the men I saw in the doorways and in the room were faces that were distorted, bloodshot eyes, lips drawn back over their teeth, and a general appearance of frenzy and hate.

Q Did you see -

Defense: If the Court please, I certainly am going to object to the witness' conclusions here. It is a matter for the Court to determine. He can testify to physical appearance.

Trial Judge Advocate: I will agree to the striking of the words, "frenzy and hatred".

Q Now, Sergeant, did you notice anything about the nostrils of any of them?

A Yes, sir, the nostrils were dilated.

Q Did you notice anything about their headwear?

A I observed some helmets.

Q What kind of helmets?

A They were steel helmets.

Q Now, Sergeant Farr, did you have an automobile that was parked close to the orderly room?

A Yes, sir.

Q Was any other vehicles parked close to it?

A Yes, sir.

Q What was that?

A U.S. Army quarter ton.

Q A jeep?

A Yes, sir.

Q Now, did you hear anything while you were in the orderly room with respect to either your car or the jeep?

A Yes, sir. Very shortly after the first attack on the building I heard the jeep being started.

Q All right. Did you hear anything with respect to your car?

A No, sir, I did not.

Q Did you see your car after the incident was subdued over at the orderly room?

A Not that night, sir

Q When did you see your car next?

A Not until I was released from the hospital.

Q Were there any lights on the outside of the orderly room?

A Yes, sir, there was.

Q Will you step up to the map and show the Court where the lights were on the outside of the orderly room, speaking now on August 14, 1944.

A There was a light located above door A on the outside of the building.

Q And while you are here, were there any lights on the latrine, building 712?

A Yes, sir, there was.

Q Outside lights?

A Yes, sir, there was a light outside the door on this side of

the building. (indicating). Above the door on the outside of the building.

Q That is building 712?

A 712.

Law Member: Where is the door?

Q There is a door about midway on this side (indicating)?

A Yes.

Q That is south.

Law Member: Any light at door E?

The Witness: No, sir.

Q Sergeant, do you know how you received the wound that you first mentioned, the stab wound in your arm or shoulder?

A No, sir, I don't.

Q You don't know who inflicted it on you?

A No, sir, I don't.

Q Did you notice it when it happened?

A I felt a stinging sensation in my arm, yes, sir.

Q And when is the first time that you knew that you had been cut in the groin?

A Not until I arrived at the hospital, sir.

Q When your clothes were taken off you had you bled?

A Yes, sir.

Q A little or considerable?

A Considerable.

Q But you didn't know of your groin injury until you were at the hospital?

A I was aware of some kind of injury to that region. However, I did not know that it was a knife wound at the time.

Q Now, Sergeant, we spoke a while ago of your having been unable to pick out the man in the line-up who took you from the orderly room, nor the man whom you were turned over to. I wish you would look at each of these accused -- take your time -- and see if you can find the colored soldier among them who took you from the orderly room or whom you saw later on. Will you do that, please?

A (Witness makes an inspection of the accused) No, sir.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Sergeant, as I understand the situation, you and Corporal Haskell occupied room Z in the orderly room there?

A Yes, sir, that is correct.

Q And you were the only two individuals who lived or slept in that particular building?

A Yes, sir.

Q Now, room Y, as I understand it, was the Company Commander's office?

A Yes, sir, that's right.

Q What was his name?

A Beckman.

Q Captain Beckman?

A Yes, sir.

Q He wasn't there that evening at all, was he?

A No, sir, he wasn't.

Q Now, you retired, or at least you were in your bed and awake, at the time taps sounded?

A Yes, sir.

Q Your entire building, the orderly room, was dark at that time, I assume?

A Yes, sir.

Q Had you had occasion to look out around the Italian area at any time prior to that?

A No, sir.

Q Well, let me ask you this, Sergeant. Were there any lights on in barracks 709?

A I don't know, sir.

Q Well, how about, Sergeant, at the time you went on up the hill after you left? Were there lights lit at that time?

A I didn't notice.

Q How about in 708?

A Which is 708?

Q 708 is the corner one.

A No, sir, I don't recall any lights on at the time.

Q 710. You recall any lights in there?

A No, sir.

Q Now, there were no overhead lights in this Italian area, were there, Sergeant?

A Not that I recall, sir.

Q The only outside lights being a light on the end of the orderly room, 713, and that was over the door?

A Yes, sir.

Q Door A, I think you call it?

A Yes.

Q And then there was a light over the door on the latrine, building 712?

A Yes.

Q And as far as you can recall those were the only outside lights in that Italian area?

A Yes, sir.

Q Now, after the difficulty started you turned on a bed light over your bed in room Z, didn't you?

A Yes, sir.

Q That was later turned out, wasn't it?

A I don't know, sir.

Q Now, do you know whether there were lights in room Y or not?

A I couldn't tell, couldn't state positively that there was a light on in there.

Q Do you know positively there were lights on in room R?

A Yes, sir.

Q There were lights on in that room?

A Yes, sir.

Q Now, at what stage of the proceedings are you certain there was lights on in room R?

A The lights -- I noticed lights in room R when I was standing at the telephone and door D at that time was open.

Q At the time you had gone to bed there wasn't any lights on in room R?

A No, sir.

Q So somebody turned them on after?

A Yes, sir.

Q Do you know whether or not after you were talking at the telephone the lights were extinguished by anyone in room R?

A I don't know, sir.

Q Now, you saw a man you identified as Montgomery in doorway B?

A Yes, sir.

Q Which way was he facing at that time? Was he facing towards room X?

A Yes, sir, he was.

Q How tall would you say Montgomery was?

A I would say five feet eight or nine, possibly ten inches tall.

Q Five feet eight to ten inches?

A Yes, sir.

Q And about how heavy on this night?

A 145 - 150 pounds.

Q 145 or 150 pounds. Do you recall how he was dressed, Sergeant?

A No, sir, I don't. I couldn't state positively.

Q But he wasn't armed?

A No, sir, I saw no weapon.

Q And you didn't see him commit any act of assault or depredation?

A No, sir, I didn't.

Q Now, do you recall having some conversation with him?

No, sir, I don't recall no conversation.

Q Did Corporal Haskell have a conversation with him?

A I don't know, sir.

Q You don't recall that, but you do recall seeing Montgomery in doorway B, facing room X?

A Yes.

Q And, Sergeant, was he standing in the doorway alone at that time?

A No, sir, there were other colored soldiers in the doorway.

Q How many were in the doorway itself?

A Well, sir, I don't know. I believe the most people, number you could get in, would be three.

Q You think there were three men in that doorway?

A Well, if --

Q (Interrupting) Not standing sideways.

A No. Two or three possibly.

Q At the time you saw Montgomery was someone else in the doorway with him at the same time?

A Yes, sir, I would think so. I am not positive about that.

Q Well, from your recollection which part of the doorway was Montgomery standing in? Would that be the part of the doorway closest to room Y or the part of the doorway farthest away from room Y?

A As I recall it was approximately in the middle of the doorway.

Q It would make it pretty difficult for anyone to see anyone?
A Well, sir, I don't know.

Q Where was it you saw Stewart?
A Stewart was also in door B.

Q At the same time that you saw Montgomery?
A I don't recall.

Q You don't recall?
A No.

Q You just have a recollection of having seen Stewart in doorway B.
A Yes.

Q Do you recall how Stewart was dressed?
A Yes, sir, I do.

Q How was he dressed?
A He was dressed in a white "T" shirt and khaki trousers.

Q Suspenders?
A Yes, sir.

Q Was he wearing a helmet?
A I didn't see the helmet.

Q Have any head gear on?
A No.

Q You say he didn't or you don't recall?
A He did not.

Q How tall would you say Stewart is?
A I would say that Stewart is five feet eight or nine inches tall.

Q And about how heavy on that evening?
A He was of a husky build. Approximately 170-175.

Q What are the particular physical characteristics, distinguishing characteristics, about Stewart that you are able to identify him from any of the other men in this group back here?
A I was first attracted to Stewart by the fact he was waving a knife. I took pretty particular notice of the man with a knife in his hand.

Q You never saw him use his knife?
A No, sir.

Q Did you see him injure anyone?
A No, sir, I did not.

Q Did you see him commit any damage to any property?

A No, sir, I did not.

Q I wish you would answer the question as to what particular physical characteristics there is about Stewart that you are able to pick him out and say Stewart rather than any other men in this group or some other group?

A Well, sir, as I said, I was attracted to Stewart by the fact he had a knife in his hand.

Q You said that a couple of times, Sergeant. You still haven't answered my question. What particular physical characteristic is there about his physical makeup that is different than the other colored soldiers back here by which you are able to pick him out and say it was Stewart rather than some other individual?

A Well, sir, one characteristic was the upright hair on the front of the head.

Q You think that is peculiar to him and none of the other colored soldiers here have that?

A No, sir, but that was one of the things I remember.

Q Any other?

A Well, he was of medium complexion. He wasn't as dark as some nor as light as some.

Q Anything else, Sergeant?

A No, sir.

Q Now, how many men did you originally identify when you were given an opportunity at the show-up down at Camp Jordan?

A I don't know, sir.

Q You identified a lot more than the three you have identified here today, didn't you?

A No, sir.

Q And you were later up at the Port of Embarkation downtown here?

A Yes, sir.

Q And you weren't able to identify Montgomery at that time, were you?

A He wasn't there, sir.

Q Well, what men or man that you weren't able to identify at that time?

A At that time, Sutliff.

Q Oh, Sutliff you weren't able to identify. Now, what method was used down there at the Port when you were given an opportunity to identify these men. Were you taken before a large group of them or were they paraded before you in a group, or were you taken into a room where a particular individual sat alone without other colored soldiers around?

A I was taken into a room where the individual sat.

Q And what was said when you went in there?
A I was merely questioned as to what had taken place that night and I was asked if I had ever seen the man sitting in front of me previous to this time.

Q You were told his name before you went in there?
A No, sir, I wasn't.

Q Are you sure about that Sergeant?
Yes, sir.

Q You weren't told the man's name you were going to see when you went into the room?
A No, sir.

Q But there was only one individual in the room; there wasn't another group of soldiers around?
A Yes, sir.

Q Then you were later given pictures of the men, weren't you?
A I was shown pictures of them for identification purposes.

Q And it was a picture that had the man's name on it, wasn't it?
A Yes, sir.

Q Do you recall approximately how many men you picked out of the line at the time that you were at Camp Jordan?
A No, sir, I don't.

Q Well, was it more than ten?
A Yes, sir, I would say that.

Q Was it as many as twenty?
A I am not sure.

Q You never later were able to identify most of them again, were you?
A No, sir.

Q What was there about Sutliff, Sergeant, that you identified him on one occasion and weren't able to identify him on another occasion?
A At the time I was interviewed at the Port concerning that man, I was not sure that that was the man.

Q And then you were later at another time, when you saw him again, you were sure?
A Yes, sir.

Q Well, what intervened in the interim there to make you more certain than you had been?
A Nothing sir.

Q In other words, when you saw him down at the Port alone you

- weren't sure about it?
- A No, sir.
- Q And then at a later date you became positive again?
- A Yes, sir.
- Q By the way, when you at Colonel Jaworski's request looked the group over to see if the man who escorted you out of the area was here, you didn't mean by your answer to imply it wasn't one of these men; you just don't know who it was, isn't that right?
- A Yes, sir, that is correct.
- Q The man who was the benefactor may have been one of these men; may have been someone else; you just don't recall him?
- A Yes, sir.
- Q Now, as you left the area you noticed quite a number of men, as I understand it, standing on this embankment above Wyoming Avenue?
- A Yes, sir.
- Q And what were they doing? standing there looking down into the Italian area?
- A I shouldn't say I saw quite a number of men. I saw flashlights along the top of this embankment; I saw men at the top of the stairway up which we climbed to get over the hill.
- Q Well, at the top of the stairway wasn't there quite a number up around in there?
- A There was considerable, yes.
- Q What were they doing, what were those men, spectators, doing? Looking to see what was going on?
- A I didn't notice.
- Q Still quite a number of men in the area?
- A Yes, sir.
- Q Did you see a number of men just standing around looking to see what was going on?
- A No, sir, I didn't.
- Q You saw quite a number just standing out there doing nothing in particular?
- A In the area, sir. The men I saw were moving around.
- Q Well the men that you saw that were moving around, what part of the area were they in, Sergeant?
- A They were -- the greatest activity was concentrated outside door A, and also a good deal of activity outside of door E, and in the area between building 713, 712 and the barracks 709. There were several soldiers running around there.
- Q You mean everybody was running around and on the move?
- A Yes, sir.

Q Did you see quite a number of them just standing there?

A No, sir.

Q You didn't look around where that elevation is up around Wisconsin Avenue, or Wyoming Avenue I guess it is?

A I don't believe I understand the Major's question.

Q Well, I want you to understand it, Sergeant. Come over here by the map, will you please. Can you identify approximately on here the place where you left the area, referring, now, to Prosecution Exhibit 2?

A I came around in this manner and up here (indicating).

Q Well the stairs you referred to are approximately on Wyoming Avenue, opposite about the middle of barracks 710?

A Yes, sir.

Q And that is where you went up the stairs. And then what line of travel did you take?

A Then exactly directly across this vacant area and here (indicating)

Q From Wyoming Avenue to Virginia Avenue?

A Yes, sir, to Virginia, and then turned right on Virginia and followed Virginia down.

Q You didn't get over around building 700?

A No, sir. Merely passed there on our way out.

Q You passed the front part of building 700?

A Yes.

Q Now as you were passing the front part of building 700, along Virginia Avenue, weren't there quite a number of colored soldiers still up in that vicinity of barracks 719 and 720?

A I don't recall any great number of them, sir.

Q Well, did you see any?

A Yes, sir, there were some.

Q Well, about how many did you see?

A Oh, I would say I saw five or six.

Q How many colored soldiers are there down there in that area?

A I don't know, sir.

Q Well, on this particular night?

A I don't know how many were there.

Q Well, there were three port companies down in there, weren't there?

A I don't know.

Defense: I think that is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant, at the time that you made identification the first time that there was a show-up was that done for the purpose of having tentative or positive identifications?

Defense: If you know.

A I was informed at that time, sir, to pick out men whom I thought had been at the riot that night.

Q And were you later told or not told that we were interested only in positive identifications?

A I was told that, sir.

Q Now, I want to tell this Court if there is the least doubt in your mind about Richard Sutliff or Leslie Stewart, Corporal Leslie Stewart, or Roy Montgomery, the three men that you have identified, as to your having seen them as you have described to this court? Is there the least doubt in your mind about them?

A No, sir.

Q Are you positive in each instance?

A At this time my identification is positive, yes, sir.

Trial Judge Advocate: The prosecution has no further questions.

Law Member: No Questions.

President: I have one or two questions.

EXAMINATION BY THE COURT

Questions by President:

Q Sergeant Farr, how long was it after August 14th when you were first called upon to identify anybody that took part in the riot?

A One week, sir.

Q One week?

A It was August 21st.

Q You were still in the hospital at the time that you made that identification?

A Yes, sir, I was.

Q What date did you make the positive identification of these three men?

A Positive identification of Stewart and Montgomery I made on September 4th, I believe. It was two weeks later, at any rate, on a Monday.

- Q During the time between the first identification and the second identification were you furnished any pictures or anything by the investigating personnel?
- A No, sir, I was not.
- Q You did not see any pictures at all between the first identification and the positive identification of September 4th?
- A No, sir.
- Q In other words, you came down from the hospital to the Port area on approximately a week after the incident and tentatively identified a number of people?
- A Yes, Sir.
- Q Then you went back to the hospital and on September 4 you came back again and positively identified the three or the two, that you spoke about?
- A Yes, sir.
- Q Stewart and Montgomery. And in between that time you had had no communication with the investigating officers, nor had you been shown any pictures?
- A No, sir.
- Q When did you positively identify Sutliff?
- A I don't know the date, sir. It was approximately a week or so after the investigation at the Port.
- Q A week or so after the September 4th investigation, you mean?
- A Yes, sir.
- Q What made you able to identify him then when you couldn't before or had been asked to identify him before?
- A I was brought into the room where Sutliff was sitting and asked if I could positively identify him at that time. I informed the investigators that there was some question in my mind that that was the man. However, at a later date, in going over this thing in attempting to recall as much as possible of what had occurred that night, I became certain that that was the man.
- Q President: Any further questions by members of the Court?
- Questions by Lt. Colonel Stecher:
- Q Have you been around colored personnel before?
- A No, sir.
- Q Have you had any experience with them at all?
- A No, sir, not in the Army.
- Q In your entire life have you had any experiences where you have had actual contact or quite a bit of contact with the colored personnel?
- A No more than the ordinary American, sir, I would say. I

was born and raised in Utah and I have never had a great deal of contact with the colored people.

President: Apparently there are no further questions.

Defense: I would like to ask one further question.

RECROSS EXAMINATION

Questions by Defense:

Q The examination Sergeant, September 4th, was that the one that took place at the Port?

A Yes.

Q You say you identified Montgomery at that time?

A No, sir. The situation was this. I identified Stewart at that time, and then was taken to Fort Lawton stockade where I identified Montgomery.

Q On the same date?

A On the same date, yes, sir.

Q At that time you weren't able to identify Sutliff?

A Yes.

Q I see.

Defense: That is all.

Trial Judge Advocate: No further questions.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Defense: I was going to ask the Court for a slightly earlier adjournment hour in these sessions than 5:00 o'clock. I understand Colonel Jaworski hasn't any objection, and my reason is this. I find many things during the course of the day that I have to further investigate, and that I haven't had the opportunity of further investigating, and if we go right up to closing time at 5:00 it is too late for me to get in touch with anyone. I think that a half hour earlier adjournment would be much better and we would make much more progress by having that much more time to organize our work for tomorrow.

President: Do you have anything on that, Colonel Jaworski?

Trial Judge Advocate: Well, I have no objection to it. We might do that for a day or two, or three. Of course, frankly, at the time I talked with counsel I didn't know we would take an hour and a half for lunch. Of course, that cuts down our working day. But since counsel suggested it at this time, and if

it is all right with the Court, let's do it for a day or two and see how we move along. If progress is tremendously slow, we might have to take on a little more time.

President: Frankly, I believe it will be desirable to close the Court at 4:30 for the reasons that counsel gave and also to give the Court time to work on their notes and see that they have the evidence that has been presented today properly disposed of so that they can keep it well in mind. At least for the next few days the Court will adjourn as close to 4:30 as the witnesses will make it practical. If we have a witness that is nearly through at 4:30, we will go on until that witness is through. If we have witnesses at 4:25 that are just coming up, the Court will adjourn to meet at 9:00 the next morning. The Court will adjourn at this time to meet at 9:00 o'clock tomorrow morning.

The Court then, at 4:25 p.m. on 20 November 1944, adjourned to meet at 9:00 a.m., 21 November 1944.

LEON JAWORSKI
Lt. Colonel, J.A.G.D.
Trial Judge Advocate

Fort Lawton Staging Area,
Fort Lawton, Washington
21 November 1944

The Court reconvened at 9:00 o'clock a.m., 21 November 1944.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the Defense ready to proceed?

Defense: Ready, sir.

President: The Court will come to order.

A roll call of the accused was conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: I would like for the record to show each of the accused is present, that all members of the Court, the personnel of the Defense and the Prosecution present at the time of adjournment yesterday are in attendance this morning.

The Reporter was also present.

Defense: May I take one matter up with the Court at this time. If it please the Court, at this time the Defense wishes to renew its request for the Court to visit the premises in question in this case during the nighttime and under conditions similar to what they were on the night of August 14th. I am renewing it now at this time because it will involve some arrangements with the Post Engineer on turning off certain lights that are down in the area now.

Law Member: Major, that motion is under advisement, but it seems to me that if there is to be some more evidence pertaining to the locus that we should defer until such time as that evidence is in before the Court makes the requested visit to the place.

Defense: I wanted the Court to have it in mind.

Law Member: We have and it seems to me that the appropriate time would be after the Prosecution has closed.

Defense: Well, it is the opinion of Defense --

Law Member: I mean, Major, is there any particular reason why you want us to view the premises, say, tonight?

Defense: It is my opinion that if the Court views the premises earlier in the proceeding they might have a different picture of some evidence that they will receive in this case, than they would of the evidence without having in mind what the condition of the premises down there is actually like.

Law Member: Well, it appears to me that the Defense is very desirous that the Court view these premises, and subject to the objection of any member of the Court, I feel that your request should be granted. The only thing remaining is when will be the best time for us to make that visit.

Defense: That, of course, is a matter within the discretion of the Court.

Law Member: Major, in just talking with Colonel DeWitt, the President feels that more evidence should be in the record pertaining to the nature of the conditions that existed that night before we make a visit.

Defense: Very well. The main purpose in pointing it out to the Court this morning was that there will be some element of time involved in getting the Post Engineer to do what is necessary.

Law Member: I am sure plans could be made so those plans can go forward with dispatch. But it seems to me we should have evidence as to whether the moon was out or the stars were out, whether it was raining or whether it was foggy. We have the artificial lighting well in mind, but there has been nothing said in the record pertaining to the weather. I assure you, Major, we will make a visit as requested.

President: I would like to interject in here we should get that evidence in here rather soon and try and pick a night as nearly approximates it as the time of the month and so on will permit.

Trial Judge Advocate: I would like to assure the Court the Prosecution has prepared itself to present evidence to the Court that will give a full description of the type of the evening that was involved and as much of the nature of the conditions as it is possible to present to the Court. The matter of viewing the premises at this time, I might say, would merely require the Court to have to take two visits down there, because it is going to be a number of days before there will be any evidence as to the situs where this alleged hanging occurred, and, obviously, if the Court is going to visit one spot, the Court will be interested in viewing the other spot. There is no evidence in the record where that occurred and won't be for a few days.

Defense: It would be almost an impossibility for the Court to visit the scene of the hanging in the nighttime. I wouldn't ask the Court to do it.

Law Member: Major, we are going to grant your request to view the premises but we feel it should be deferred at the present time.

President: In view of the fact the moon is different at

" different times of the month, we would like to get in evidence as to what the light conditions were at that time, so we can as nearly as possible during the course of this trial catch a night that is similar. I would prefer to do that and to wait.

Defense: As far as the moon is concerned that is a matter of record and I don't know whether Counsel has checked into it, but I have. I think we can possibly agree.

Trial Judge Advocate: Let's let the evidence develop that.

Law Member: Without casting any aspersions on Seattle weather, I have been here two weeks and I would like to see the sky.

Defense: That isn't a matter we want the press to print, I assume.

Trial Judge Advocate: Is the Court ready to proceed?

President: The Court is ready to proceed.

Tech 5 Willie Ellis, 650th Port Company, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name, grade, organization and station.

A T-5 Willie Ellis, 650th Port Company.

Q Fort Lawton?

A Fort Lawton, Washington.

Q You say you are a T-5?

A I am.

Q I notice you are not wearing your chevrons?

A Sir, I just received my blouse and I didn't have a needle and thread to sew them on.

Q Have you received a new uniform?

A Yes.

Q How old are you, Corporal Ellis?

A 21.

Q Now, I am going to ask you to remember to keep your voice raised and speak loud and distinctly, and slowly, Corporal Ellis, because it is not I or the Defense Counsel that wants to hear what you want to say but the members of the Court. They are the ones you are speaking to, so keep your voice up.

A Yes, sir.

Q Do you recall the incident on the night of August 14, 1944, that involved the entry of some negro soldiers in the Italian area at Fort Lawton?

A I do, sir.

Q Did you or not have occasion to go into the Italian area yourself on that particular night?

A I did, sir.

Q Will you step up here a minute, please. This is a map that has been stipulated too. I am pointing to Prosecution Exhibit No. 2 -- as being a correct map of that area. Now, what barracks did you live in?

A This one, sir. (indicating)

Q 719?

A Yes, sir.

Q Now, will you point from 719 and show the Court in what direction you went from barracks 719 to the Italian area?

A Well, sir, I came from my barracks 719, came on around the Lawton Road, on around down to the orderly room of the Italian area.

Q To 713?

A To 713.

Q All right. Now, did you walk alone or did you walk in a group?

A I was alone, sir.

Q Did you or not see any military police that night?

A I did, sir.

Q Where?

A In the Italian area.

Q Can you be a little more specific; can you state about where in the Italian area you saw them?

A Some of them were around the orderly room and some of them were back of the first Italian barracks.

Q Would that be 708? Step up here, please. Would that be barracks 708?

A Yes sir, this one right here (indicating).

Q I see. All right. Now about how long were you in the vicinity of the orderly room, building 713, before the military police arrived?

A Around eight minutes, sir.

Q Around eight minutes. What were you doing there?

A Sir, I was just watching the fellows down there.

Law Member: Watching the fellows down in that area, is that what you said?

The Witness: Yes, sir.

Q All right. I wish you would speak loud and distinctly now and tell the Court, first, where you were standing in the vicinity of the orderly room. Just point where you were standing and in what direction you were moving?

A I was standing here by this tent (indicating).

Q Standing by this first tent?

A Yes, sir.

Q The tent that is between barracks 709 and the orderly room?

A Yes, sir.

Q All right.

A Standing between the tent and the orderly room.

Q Standing between the tent and the orderly room?

A Yes, sir.

Q All right. Were there lights on in the orderly room?

A Yes, there was.

Q State whether or not those lights were shining through any doors or any windows; if so, tell us which ones?

A They were, sir. The back and the front.

Q The back and the front?

A Yes, sir.

Q Let's take this Prosecution Exhibit 3 now. This is a plat of the orderly room.

A Yes, sir.

Q Now, you said you were standing between the orderly room and the tent?

A Yes, sir.

Q All right. Now, were you standing anywhere close to this door E?

A Yes, sir, I was.

Q About where? Point.

A About here, right in front (indicating).

Q Right up in front of it, did you say?

A Yes, sir, up in front of it.

Q And about how long did you stand there?

A I don't know exactly how long it was, but it wasn't very long, and then I moved around to the front.

Q And then you moved around to the front?

A Yes.

Q Did you get anywhere close to door A?

A Yes, sir. I was this spot here (indicating).

Q Now, state whether or not there was a light over door A.

A No, sir, I am not for sure whether a light over Door A or not.

Q State whether or not you saw any light coming out of door A?

A Yes, there was, sir.

Q And what were the light conditions as to door E here?

A There wasn't very much light coming out of door E.

Q Was there some?

A Yes, sir.

Q Did you observe the windows on this side of the orderly room (indicating)?

A I did, sir.

Q And was a light shining through those windows?

A Yes, sir.

Q Was it raining that night or was it a clear night?

A It was a clear night, sir.

Q And was it foggy?

A No, sir, not at the time I was down there.

Q Not at the time you were there. Do you know the accused Nathaniel Spencer?

A Yes, sir, I do, sir.

Q Will you step up there and look over the accused and point out Nathaniel Spencer.

A This one (indicating one of the accused).

Trial Judge Advocate: Does the Court want to satisfy itself?

Q This is the accused Nathaniel Spencer, did you say?

A Yes, sir.

Q Let's stand here, with the permission of the Court. Did you see the accused Nathaniel Spencer on the evening in question during the time you were down in the area as you have testified?

A Yes, sir, I did, sir.

Q Now, where was he standing?

A He was standing around door E.

Q Around door E on this side of the orderly room. Did he have anything in his hand?

A Yes, sir, he did.

Q What did he have in his hand?

A He had a club, sir.

Q He had a club?

A Yes, sir.

Q Do you know the accused Walter Jackson?

A Yes, sir, I do.

Q Will you look over the accused and see if you can find Walter Jackson.

A There he is, sir (pointing to one of the accused).

Q That is the accused Walter Jackson?

A Yes, sir.

Q Did you see him?

A Yes, sir.

Q When you were standing near the orderly room?

A I did.

Q And where was he?

A He was around door E too, sir.

Q And did he have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a club also, sir.

Q He had a club also. Do you know the accused Freddie Lee Simmons?

A Yes, sir, I do, sir.

Q Did you see him?

A Yes, sir.

Q On the occasion of your being in the vicinity of the orderly room?

A I do, sir.

Q And where did you see him?

A He was around door E.

Q And did he have anything in his hand?

A Yes, sir, he did, sir.

Q And what was it?

A He had a club also.

Q He had a club also. Now, have I had you point out Freddie Lee Simmons?

A No, you haven't.

Q Find him. See if he is among the accused and point him out.

A Right here, sir (pointing to one of the accused).

Q Do you know the accused Russel Ellis?

A Yes, sir.

Q Will you point him out?

A Right here, sir (pointing to one of the accused).

Q Now, did you see the accused Russel Ellis at the time you were standing in the vicinity of the orderly room?

A Yes, sir.

Q And where was he standing?

A He was around door E too, also.

Q He was around door E also. Did he have anything in his hand?

A Yes, sir.

Q What was it?

A He had a 2 x 6 scantling.

Law Member: How do you spell, that, Colonel?

Trial Judge Advocate: S-c-a-n-t-l-i-n-g.

Q Russel Ellis had this scantling. Do you know the accused Sergeant Arthur Hurks?

A I do, sir.

Q All right. I wish you would look over the accused and see if you can point out Sergeant Arthur Hurks.

A Here, sir (pointing to one of the accused).

Q That is Sergeant Arthur Hurks. All right. Did you see him on the night in question?

A I did, sir.

Q All right, let's go over here to this map now and I want you to point out to the Court just where you saw Sergeant Arthur Hurks, first?

A First I saw Sergeant Arthur Hurks going in the front door of the orderly room.

Q That is door A?

A Yes, sir.

Q Now, just trace his movements. Just show the Court where you saw him go. Where were you standing, first? Tell us that.

A I was standing right here, sir (indicating).

Defense: If the Court please, from the witness' own statement he was standing outside the building. How can he trace the movement inside the building.

Trial Judge Advocate: He said he was first standing there. He didn't say he continued standing there, Major Beeks.

Q Will you start again and tell us where you saw Sergeant Arthur Hurks go?

A I was standing here when I seen Sergeant Arthur Hurks go through the front door of the orderly room, sir.

Q All right.

Law Member: Colonel, he is saying "here".

Trial Judge Advocate: Yes, sir. I will have that marked in just a minute.

Q Will you do this? Will you mark when you first saw Sergeant Hurks go in. Just make a mark.

Defense: I suggest you mark with the letter "E".

Q Will you put "WE" there.

Law Member: The "X" on Exhibit 3, Prosecution Exhibit 3, at the corner of the building with the initials "WE" represents where you were standing at the time you saw the accused Hurks go through door A, is that correct?

The witness: Yes, sir.

Q Now, after Sergeant Hurks went through door A, did you or not have occasion to move elsewhere or did you stand in that spot?

A I moved back around this way, back to the side (indicating).

Q Now, where did you go to?

A I came on back around to door E, in the front of door E.

Q Did you look inside door E?

A Yes, sir.

Q Now, after you moved to the front of door E and looked inside door E, did you or not see Sergeant Arthur Hurks anymore?

A Yes, sir.

Q All right. Where was he?

A He was on the inside of this room B here (indicating).

Q Inside of this door marked B?

A Yes, sir.

Q Room X?

A Yes, sir.

Q Did he have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a club about this long (indicating).

Q You said about that long. Hold it again.

A About that long (indicating).

Q Step over here a minute and see if you can see a club along here about the size that Sergeant Arthur Hurks had.

A Looks something like this (indicating).

Q Something like that?

A Yes, sir.

Trial Judge Advocate: Will you stipulate that is about three feet long?

Defense: We were so accurate in our measurements yesterday, the Law Member and I, I think I am going to measure it this morning.

The Trial Judge Advocate and Defense Counsel then measured with a ruler the club.

Defense: About 35 inches.

Law Member: Let's say about three feet.

Trial Judge Advocate: And an inch and a half in diameter.

Defense: Approximately, yes.

Trial Judge Advocate: Yes, approximately one and one-half inches in diameter.

Q Where was Sergeant Arthur Hurks when you last saw him in the orderly room?

A He was on the side in this room here (indicating).

Q In room X?

A Yes, sir.

Q Now, do you know Booker Townsell?

A Booker Townsell?

Q Yes, sir.

A Yes, sir, I know him.

Q Well, let's find Booker Townsell.

A Right here (pointing to one of the accused).

Q Did you see him?

A Yes, sir.

Q On the night in question when you were standing around the orderly room?

A I did, sir.

Q Now, where was Booker Townsell?

A He was standing on the outside of the orderly room, sir.

Q About where?

A He was standing out from the corner.

Q All right. Let's point out where that is on Prosecution exhibit 3.

A Right off from the corner like this (indicating).

Q About how far from the corner?

A I would say about two yards.

Q About two yards from the corner of room Y?

A Yes, sir.

President: May I ask a question here. Corner of that building, as it stands on Exhibit 3, is the southwest corner, is that correct?

Defense: Exhibit 2, I think you mean.

Trial Judge Advocate: Yes, southwest, that is correct. This runs true north.

Defense: If there is any doubt in the Court's mind, I think we can agree the door is on this side (indicating).

Law Member: Northeast.

Defense: Northeast, yes.

Trial Judge Advocate: That is one door. The other door is at the side.

Defense: That's right. Door A on this side and that automatically puts door E on this side (indicating).

Q Now, what was Booker Townsell doing there?

A He wasn't doing anything but just standing up.

Q Have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a club, sir.

Q Do you know the accused Arthur Stone?

A I do, sir.

Q Come over here, Corporal, and let's see where Arthur Stone is.

A Here, sir (pointing to one of the accused).

Q All right. Now, did you see the accused Arthur Stone on the evening in question?

A Yes, sir.

Q Where was he standing, Corporal Ellis?

A He was going through the door A, sir, and went in through door D.

Q Through door D. From door A through room R into door D?
A Yes, sir.

Q Did he have anything in his hand?
A Yes, sir.

Q What did he have in his hand?
A He had a club also.

Q He had a club also. Do you know the accused John Hamilton?
A Yes, sir.

Q Will you point him out, please?
A Here, sir (pointing to one of the accused).

Q All right. Did you see him on the evening in question?
A Yes, sir.

Q And where did you see him?
A I see him also going through door A to door D in the orderly room.

Q From door A to door D. Did he have anything in his hand?
A Yes.

Q What did he have in his hand?
A He had a club also.

Q Now, do you know the accused Riley Buckner?
A Yes, sir.

Q And will you find him, please. Point him out to the Court.
A Here, sir (pointing to one of the accused).

Q Did you see Riley Buckner?
A Yes, sir.

Law Member: Make sure we get the name.

Q Where did you see the accused Riley Buckner on the evening in question?

A I seen Riley Buckner when he picked up Alvin Clark.

Q You saw Riley Buckner when he picked up Alvin Clark?
A Yes, sir.

Q Getting back to here, to this area, this Italian area, about where did you see Riley Buckner pick up Alvin Clark?
A Out from the orderly room, sir.

Q Out from the orderly room. About how far removed from it?
A I don't know, sir. Be about six feet, I imagine. It might have been more.

Q May have been more?
A Yes.

Q Now, you pointed to the tent. Was it somewhere close to this tent that stands almost directly in front of the orderly room on this map, Prosecution Exhibit 2?

A Yes, sir, between this tent and the orderly room.

Q All right. You say he picked up Alvin Clark. Where was Alvin Clark?

A I seen Alvin Clark coming out of this orderly room.

Q Well, you said he picked him up. Now where was Alvin Clark is what I am talking about. You said Riley Buckner picked him up.

A Where was he?

Q Yes. Was he standing up, lying down, or what was Alvin Clark doing?

A He was lying down.

Q He was lying down?

A Yes, sir.

Q And you say you saw the accused Riley Buckner pick him up. Now, please tell the Court how that was done?

A Sir, when I seen Alvin Clark he fell, and then I seen Riley Buckner, he picked him up and some more fellows, but I couldn't identify them, I don't know, and they take him on out of the area.

Q Took him on out of the area. All right. Now do you know the accused Richard Barber?

A Yes, sir, I do, sir.

Q Well, let's see where the accused Richard Barber is. Will you point him out to the Court?

A Here, sir, (indicating one of the accused).

Q Now, where did you see the accused Richard Barber that night?

A I seen him going in the orderly room.

Q You saw him going in the orderly room?

A Yes, sir.

Q Now, what entrance did he make into the orderly room; which way did he go in?

A Came from this side and went here (indicating) --

Q What do you mean when you say, "this way"?

A From out in the front of the orderly room.

Q From out in front of door A?

A Yes, sir.

Q And walked which way through?

A Through door A.

Q Did he have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a stick, sir.

Q Now, do you know the accused Robert Sanders?

A Yes, sir.

Q Did you see him on the night in question?

A Yes, sir.

Q All right. Let's find the accused Robert Sanders.

A Right here, sir (pointing to one of the accused).

Q Where did you see the accused Robert Sanders?

A First I seen him, sir, he was in a jeep.

Q First you saw him in a jeep?

A Yes, sir.

Q Now, where was this jeep?

A This jeep was sitting here on this side of the tent (indicating).

Q Where you pointed --

Defense: What was the answer?

The Witness: The jeep was sitting on this side of the tent.

Q Point again.

A Yes, sir. Right here (indicating).

Q Now, what is on the side of the orderly room, on the south side of the orderly room, is that correct?

A Yes, sir.

Law Member: Let's put a "J" on Exhibit 2 representing the position.

Defense: May I suggest that we continue with the same markings we have used with this witness by using his initial. WEJ would be all right.

Law Member: Put a "J" and "WE".

Q Will you put your initial here. Put a "J" at the spot where you saw the jeep.

A (Witness indicates as requested).

Q Well, what did you see Robert Sanders do in connection with the jeep?

A See him trying to run over the tent, sir.

Defense: I did not get that answer.

Trial Judge Advocate: Trying to run over the tent.

Q Did you see whether or not he started the motor of the jeep?

A No, sir. When I seen him it was already cranked up; he was already in it.

Q When you saw him he was in it?

A Yes.

Q Was the motor running when you saw him?

A Yes, sir.

Q What did you see him do with the jeep?

A See him back it up and run it into the tent.

Q Into what?

A Into the tent.

Q Well, did you see the accused Robert Sanders any more after that?

A I did, sir. After that I seen him going in the orderly room through door A.

Q Was he carrying anything in his hand?

A Yes, sir.

Q What was that?

A Carrying a stick.

Q Do you know the accused William G. Jones?

A Yes, sir, I do.

Q Well, let's find William G. Jones.

A Here, sir (pointing to one of the accused).

Q Now, did you see the accused William G. Jones on the occasion in question?

A I did, sir.

Q What was he doing?

A He was standing at the side door of the orderly room, door E, with a club in his hand.

Q Standing at the side --

A (Interrupting) Standing at the side at door E with a club in his hand.

Q All right. You may sit down. Now, after the M.P.'s came and matters were quieted down in that area, did you go back to your barracks?

A Yes, sir, I did, sir.

Q Did you hear anyone make any statements, any of these accused that you have pointed out? Did any of them make any statement

within your hearing after you returned to the barracks?
A I did, sir.

Q Whom did you hear say anything? Give us the name, first.
A I heard Arthur Stone.

Q The accused Arthur Stone. Now, what did you hear the accused Arthur Stone say?
A I heard him say that all that didn't go down there was yellow.

Q All right. Did you hear anyone else say anything?
A I did, sir.

Q Who was that?
A Nathaniel Spencer.

Q Well, what did the accused Nathaniel Spencer say?
A He said we had ourselves a ball.

Q Did you hear any of the accused that you have identified say anything?
A I did, sir.

Q Who was that?
A Russel Ellis.

Q And what did you hear the accused Russel Ellis say?
A He said we gave the Italians a good whipping.

Q Did you hear any of the other accused say anything?
A I did, sir.

Q All right, tell us who it was.
A Freddie Lee Simmons.

Q And what did you hear Freddie Lee Simmons say?
A I heard him say, sir, the Italians like to got him.

Q The Italians like to got him?
A Yes, sir.

Q Now, Corporal Ellis, have you been promised anything for testifying as a witness in this case?
A No, sir, I haven't, sir.

Q Any type of reward or anything of any type or character or nature been promised you by anyone?
A No, sir, I haven't.

Q Has the Defense Counsel, Major Beeks, talked with you about your testimony in this case?
A Yes, he has, sir.

Q Do you know the accused Wallace Wooden?
A I do, sir.

Q Let's see if we can find Private Wallace Wooden?

A Here, sir (Indicating one of the accused).

Q That is Wooden. Did you see the accused Wallace Wooden on the night in question?

A I did, sir.

Q Where did you see him? Step up to the map.

A He was standing in front of barracks 708.

Q Standing in front of barracks 708?

A Yes, sir.

Q Did he have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a club also.

Q He had a club also.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by Defense:

Q Ellis, with whom have you discussed your testimony in this case?

A I haven't discussed it with anyone.

Q You haven't discussed it with anyone?

A No one but you, sir.

Q Nobody but me?

A Yes.

Q And that is the only time you have ever talked to anybody about what you were going to testify in this case?

A Yes, sir.

Q Now, you didn't want to be charged with these boys, did you?

A I don't know what you mean.

Q You didn't want to be one of the accused in this Court room facing trial, did you?

A No, sir, if I hadn't did anything I didn't want to be accused.

Q Well, you thought if you told a story implicating other people you wouldn't be charged in this case?

A No, sir, I didn't.

Q Haven't you been told it would be recommended to the Commanding General if you implicated some of the other men in this case a recommendation for immunity would be given?

A No, sir, I haven't.

Q Well, you hoped that would be true, didn't you?

A No, sir.

Q You didn't. Now, from the time you first knew a fight was going on or trouble, you were in bed?

A Yes, sir.

Q Isn't that right?

A Yes, sir.

Q And you later got up and dressed?

A I had all my clothes on.

Q You had all your clothes on when you were in bed?

A Yes, sir.

Q You did?

A Yes, sir.

Q Where had you been earlier in the evening?

A In the evening, sir?

Q Yes.

A Before night I was down to the PX.

Q What time were you in the PX?

A I don't know, sir, exactly.

Q Was it after dinner?

A Yes, it was.

Q What time did you finish your dinner?

A Time I finished dinner?

Q Yes.

A I don't know, sir. Around 11, after 11.

Q Well, supper. Let's call it supper. What time did you finish supper?

A I don't know, sir.

Q You remember all the details of this evening, pretty well, but you can't remember what time you finished supper?

A No, sir.

Q Come over here to the map. Where is your mess hall on this map? Here is Barracks 719 down here. This is Prosecution Exhibit 2 I am referring to.

A Yes, sir.

Q Can you tell us where your mess hall is?

A No, sir, I couldn't tell you on this map.

Trial Judge Advocate: It may not be on there, Major. I don't know. Do you remember the number? Do you mind if I ask him if he remembers the number? Do you remember the number of your mess hall?

The Witness: No, sir.

Trial Judge Advocate: It may not be on there.

Q All right. You went over there that evening and had the evening meal, though, didn't you?

A Yes, sir, I did.

Q Remember what you had for dinner that night?

A No, sir.

Q Remember who sat on your left that night?

A On my left?

Q Yes.

A No, sir; I don't.

Q Do you know who sat on your right?

A No, sir.

Q Do you know who sat across from you?

A Can't remember.

Q Where did you live -- upstairs in the barracks?

A I live upstairs in the middle aisle, sir.

Q In the middle aisle. Do you have a lower or upper bunk?

A Lower, sir,

Q Who sleeps up above you?

A Wasn't anyone.

Q Who slept on your left?

A I remember Russel Ellis and Chester Herron.

Q Who slept on your right?

A I don't know any fellows slept on my right.

Q You didn't know them. There were two men slept on your right, though?

A Yes.

Q Well, on the next set of bunks to your right?

A I can't remember.

Q You can't remember who they were?

A Those fellows just moved into the Company.

Q Oh, they just come into the Company?

A Yes.

Q Now, at the time you left the barracks to go down to the Italian area there were still men left in the barracks there?

A Yes, sir, there was a few.

Q Well, about how many?

A I don't know, sir.

Q Well, you recalled the other day, didn't you, when I talked to you; didn't you say 15-20?

A There might have been. I don't know.

Q Tell the Court the names of some of those men that were still left there in the barracks, the names of the 15 or 20 men or as many of them as you can recall.

A I remember William A. Cunningham. He was left.

Q Where was he at the time you left?

A He was sleeping in the rear end of the barracks.

Q Recall any more?

A No, sir. I don't know their names.

Q How long had you been in the 650th?

A Ever since it was built.

Q Ever since it was activated, haven't you?

A Yes, sir.

Q Well, there haven't been but one or two new men come into the Company in the last few weeks before August 14?

A Well, more than one or two, sir.

Q Well, how many?

A I don't know, sir.

Q How many were there slept upstairs in your barracks that were new men?

A I don't know. Might have been 10 or more. I couldn't say.

Q Were there 10 men slept upstairs you didn't know?

A Might have been. Quite a few of them were in there.

Q You had been down at the PX earlier in the evening. How long had you stayed around the PX?

A About half an hour.

Q What were you doing? Drinking beer down there?

A Drinking some. I wasn't drinking much.

Q Did I ask you how many you drank. I asked you whether you were down drinking beer?

A Yes.

Q Who were you down there drinking beer with?

A Sergeant Harry Veeder.

Q Was Sims down there?

A Who?

Q Sims?

A I don't remember seeing him down there that evening.

Q You wouldn't say Sims wasn't down there that evening, would you?

A I wouldn't say. I didn't see him.

Q Did you see Daymond down there drinking beer?

A No, sir, I don't remember, sir.

Q You don't remember seeing him down there either. How many colored soldiers were in the PX when you were in there?

A I don't know. There was lots of them.

Q Who else would you say you knew?

A Aguinaldo Thomas and Leslie Stewart.

Q Is that all you can remember?

A Yes, sir.

Q About how many colored soldiers did you see in the PX that evening?

A 25 might have been.

Q Might have been 50?

A I know it was 25.

Q You say you stayed in there about half an hour?

A Yes, sir.

Q About what time was it when you went down to the PX?

A After 5:30.

Q It was after 5:30. Was it half an hour after 5:30, an hour after, 15 minutes after, or about how long after 5:30 was it?

A I don't know, sir.

Q You don't know. You couldn't possibly estimate either?

A No, sir.

Q Well, what time approximately was it when you left the PX?

A I don't know, sir.

Q You wouldn't have any idea?

A After 6:00.

Q Where did you go?

A I came on back to my barracks.

Q Went back to your barracks?

A Yes.

Q And what did you do?

A I didn't do anything. I was sitting around on the bed.

Q You sat around on your bed then for five hours with your clothes on?

A No, sir, I didn't.

Q What did you do?

A Sat around awhile and Sergeant Veeder came around and asked the Sergeant to get some men and go over to the mess hall and clean up the mess hall.

Q When you came back to your barracks from the PX what did you do? Go up to your bunk?

A I did, sir.

Q Who did you see in there at that time?

A I can't remember right now.

Q About how long afterwards was it that you left with Sergeant Veeder to go to the messhall?

A I would say 10 minutes, sir.

Q About 10 minutes. Do you remember what you did in your barracks in that period of ten minutes or so you were in there?

A Not anything, sir. I was just sitting down.

Q Did you talk with anyone?

A No, sir. I was looking at some fellows gambling, shooting craps.

Q Who was gambling?

A Jesse C. B. Sims.

Q Jesse C. B. Sims was in there in a crap game, was he?

A Yes.

Q Anybody else?

A Yes, sir.

Q Who else?

A I seen Richard Sutliff. He was gambling too.

Q Richard Sutliff?

A Yes. There was some more boys, but I don't know.

Q You don't recall who they were?

A No.

Q You can't remember them?

A No, sir.

Q The lights were bright and light in your barracks?

A Yes.

Q Well lighted?

A Yes, sir.

Q Where did you go with Sergeant Veeder?

A To the mess hall.

Q By the way, did you see Sergeant Veeder later on that night?

A No, sir, I didn't.

Q You didn't see him later on?

A No, sir.

Q As a matter of fact, his field jacket was found down around the area somewhere, wasn't it?

A I don't know, sir.

Q Did you know they found Sergeant Veeder's field jacket and he was charged originally and held in this offense?

A No, sir, I didn't.

Trial Judge Advocate: He was never charged. You are in error.

Defense: Well, I may be mistaken in my terminology. He was held and it was later found out he was AWOL and it was dismissed.

Trial Judge Advocate: No, there was nothing to dismiss. He was never confined.

Defense: Well, released from confinement.

Q Who was the detail that went over to the mess hall? How many men?

A There was four of us.

Q Four of you?

A Yes, sir.

Q Who were they?

A I remember two of them. I remember one of them besides myself.

Law Member: What was his name?

The Witness: I remember one of them, his name, Corporal Thomas Bennett. The other two fellows, they just came into the Company and they had been on KP duty and were still over there.

Q How long did you stay around the mess hall?

A Maybe an hour and a half or more.

Q An hour and a half or more?

A Yes.

Q About what time was it when you left the mess hall?

A Somewhere between 8 and 9.

Q Somewhere between 8 and 9:00?

A Yes. Might have been later than that.

Q Did you leave the mess hall alone?

A No, sir.

Q Who did you leave with?

A Myself and Corporal Bennett.

Q Yourself and Bennett. You came back to your barracks?

A Yes, sir.

Q What did you do when you got back to your barracks?

A Lie down.

Q When you came back up into your barracks, who did you see?

A I don't know. Might have been all the boys in the barracks.

Q You didn't have any trouble identifying then whom you saw. Who did you see in the barracks?

A Seen all the fellows in there.

Q Name some of them.

A Seen Leslie Stewart, Aguinaldo Thomas.

Q And whereabouts in the barracks did you see Leslie Stewart?

A At his bed.

Q At his bed?

A Yes.

Q Do you know what he was doing?

A He was sitting down.

Q Where did you see Thomas?

A Aguinaldo Thomas?

Q Yes.

A He was walking up and down the aisle.

Q He was walking up and down the aisle?

A Yes.

Q Talking to you?

A No, sir, he wasn't talking to me.

Q Then you stayed around your barracks there for how long?

A I don't know, sir.

Q Did you go out again?

A Sir?

Q Did you go out again that evening?

A No, sir.

Q You didn't go out again?

A No, sir.

Q When you went down to the Italian area the fight was all over by the time you got down there?

A Yes, sir.

Q And the M.P.'s were down there?

A No, sir, they wasn't.

Q Didn't they come about the same time?

A Come right afterwards.

Q About how long afterwards?

A I don't know, sir.

Q Didn't you tell me when I talked to you the other day the M.P.'s came right when you got there?

A Yes.

Q Didn't you say that was a matter of within two or three minutes?

A I don't know sir. Might have been.

Q Do you know Pinkney?

A Yes, sir.

Q He was helping the M.P.'s there that evening, wasn't he?

A Yes, sir.

Law Member: What is the name?

The Witness: John Pinkney.

Q He came down there with the M.P. Detachment, didn't he?

A Yes, sir, when I seen him he was with the white M.P.'s.

Q Wearing an M.P. brassard at that time?

A He was, sir.

Q And he had a club?

A Yes, sir.

Q He had some of your men in the 650th helping him, didn't he?

A I don't know, sir. I don't know whether men were helping or not. I just seen him with the white M.P.'s.

Q As far as you know some of the men in your unit there may have been helping Pinkney?

A Yes, they could have been, but I didn't notice.

Q Didn't you see some of them back there at Pinkney's request holding the crowd back also?

A No, sir.

Q You didn't. How was Nathaniel Spencer dressed this night?

A He didn't have on his shirt.

Q He didn't have on his shirt?

A No, sir.

Q What kind of pants did he have on?
A I can't remember.

Q Was he wearing any style of headgear?
A No, sir, I didn't see any.

Q You say he wasn't wearing any, then?
A No, sir.

Q You say he wasn't wearing a shirt of any kind. You mean he was running around in his undershirt or didn't have anything on his body at all?
A He had an undershirt but he didn't have no shirt.

Q He had on an undershirt?
A Yes, sir.

Q How was Walter Jackson dressed?
A I don't know exactly, but he had on all his clothes.

Q Well, I don't assume he was running around naked. Can't you describe how he was dressed at the time you saw him?
A No, sir, I can't.

Q Did he have on headgear or not?
A No, sir, I don't remember.

Q How was Russel Ellis dressed?
A He had on fatigues, sir.

Q You can remember definitely Ellis had on fatigues?
A Yes.

Q Did he have on two-piece fatigues?
A Yes, sir.

Q They were two pieces?
A Yes, sir.

Q Did he have a helmet on or not, or a headgear on or not?
A I can't remember.

Q You can't remember whether he was wearing headgear or not. This stick you say Ellis had, was that a white stick, or a black stick, or a green stick, or didn't have any color?
A I can't remember whether it had any color on it at all.

Q You can't recall that?
A No, sir.

Q The stick Russel Ellis had, how long a stick was it?
A I don't know, sir.

Q You don't know how long it was?
A No, sir.

Q Now, how about Nathaniel Spencer. Was it a green stick or a white stick, or a black stick that he had?

A I don't know, sir, what kind it was. It was a long one.

Q You don't recall how long it was. Was it ten feet long?

A No, sir, about three feet.

Q About three feet long. You can't recall whether it was white, green or black?

A No, sir, I can't.

Q Well, was it square or round or rectangular?

A Square.

Q About how square? Well, what would you say the dimensions of it were? How thick was it?

A Like a 1 x 6.

Q You think Nathaniel Spencer had a 1 x 6?

A Yes, sir.

Q What kind of a stick was it Walter Jackson had; what was the color of it?

A I don't know, sir, what color it was.

Q You can't recall whether it had any color on it or not?

A No, sir.

Q Well, how long was it?

A It wasn't very long. About two feet. Might have been more, longer.

Q About two feet long?

A Yes, sir.

Q Was it longer than the one Nathaniel Spencer had or shorter?

A Looked like they were the same.

Q Is there any man that was down there that evening that you have attempted to identify here that you can tell how he was dressed?

A No, sir, I couldn't tell you exactly how he was dressed.

Q Now come over here to the Prosecution Exhibit 2 with me, will you. You show the Court the route you took in going down from your barracks to the Italian area.

A Yes, sir. I came out of my barracks, 719, out the front door, and crossed the road running in front of the barracks.

Q Crossed to Virginia Avenue?

A Yes, sir. And came on around to the Lawton Road and came to the Italian area.

Q Came down Virginia Avenue to the intersection of Lawton Road, and then came down Lawton Road to the Italian area?

A No, sir, crossed this road in front of the barracks.

Q You crossed Virginia Avenue and came down Lawton Road; you didn't cut across any lots around there?
A No, sir, I didn't.

Q When you came out in front of building 719 was there a crowd around in front there?
A No, sir, I didn't see very many.

Q Was there anybody around in front there?
A Might have been 5-6 standing around on the outside.

Q Might have been 5-6 standing around on the outside?
A Yes.

Q Who were they?
A I don't know, sir. Standing down towards the Company 578th.

Q Across the street?
A No, sir, on the same side of the street.

Q How far away were they from you?
A They were close to the front of the next barracks, which was the 578th barracks.

Q And right in front of that barracks?
A Yes, sir.

Q But you are not able to identify who they were?
A No, sir, I couldn't.

Q Well, did you see any men as you were going down towards the Italian area?
A No, sir, I don't remember seeing anyone.

Q Do you remember seeing anybody?
A No, sir.

Q Wasn't anybody else going down there?
A No, sir, I didn't see any.

Q You didn't see anybody coming back up from there?
A I seen a few coming back, coming back from across the area, but I didn't know who they were. Wasn't any light.

Q Too dark to tell who they were?
A Yes, sir.

Q Now, when you first got into the Italian area, where did you go? Let's go over again to the map.
A When I first got into the Italian area I was right behind this first tent here (indicating).

Q When you first got into the Italian area you went by the tent where you have already marked your initials?
A Yes, sir.

Q And the letter "J"?

A Yes, sir.

Q How long did you stand there?

A I don't know, sir, exactly. It wasn't very long.

Q Well, did you stand there five minutes?

A No, sir, not five minutes. I moved from here around to the front.

Q You moved then --

A Around up to the front of the tent -- orderly room.

Q To the front end of the orderly room?

A Yes, sir.

Q 713?

A Yes, sir.

Q That is the end where there is a door?

A Yes, sir; to the side.

Q Well, then, where did you go?

A I came on back around this way; back on around this side (indicating).

Q You came back in the area you were standing in before?

A Yes, sir.

Q How long did you remain in front of building 713?

A I don't know, sir, exactly how long.

Q Well, several minutes?

A No, sir, wasn't that long.

Q What were you running around back and forth there for?

A It wasn't anything. I was just looking.

Q Quite a few other people down there looking too?

A Yes, sir, there was.

Q As a matter of fact, there was a great number of colored soldiers down there just looking on the same as you were?

A Yes, sir, there was a lot of them.

Q What was the greatest number of men you ever saw inside of that orderly room at one time?

A I don't know, sir.

Q Did you ever see over ten in there at one time?

A I did.

Q Did you ever see over fifteen at one time?

A Yes, sir; it was over fifteen.

Q How many did you see in there?

A I don't know, sir, but over fifteen in there.

Q After you got down and the M.P.'s came around, a lot of them went in to see what was going on or what was happening?

A No, sir, I didn't see any more go in there but what was in there when the M.P.'s came in.

Q But there was a lot of men around the area looking on just the same as you were?

A There was, sir.

Q About how many would you say down around the area?

A I don't know, sir.

Q Well, was it as many as in your Company?

A No, sir, it wasn't that many.

Q Wasn't that many. Well, as many as 150?

A Might have been, sir.

Q Where was the jeep that you talk about when you first saw it?

A When I first saw it the jeep was here (indicating).

Q The place where you marked the letter "J"?

A Yes, sir.

Q And how far were you away from the jeep?

A I wasn't far. About from here to the wall (indicating).

Q Will you step that off and let us see how many feet you were away from that jeep. Start from where you were and pace it off.

A (Witness paces as requested.)

Q 7-8 paces?

A Yes, sir.

Q Well, were you behind the jeep?

A I was kind of to the side of it.

Q You were kind of to the side of it?

A Yes, sir.

Q And when you first saw the jeep was there anybody in it?

A Yes, sir, there was.

Q One person or two?

A One, sir.

Q Were you towards the front of the jeep or towards the back?

A Towards the back.

Q Well, were you on the driver's side of the jeep or were you on the opposite side?

A I was on the driver's side.

Q And when you first saw the jeep there there was a man already in it, in the driver's seat?

A Yes, sir.

Q Did he get out?

A Yes, sir, he did.

Q When did he get out?

A I don't know, sir. When I see him the next time, I saw him, he was out of it.

Q Did you see the jeep drive off?

A No, sir, I never seen it drive off, sir. I just seen it running into the tent.

Q You saw it in motion then?

A Yes, sir.

Q Did you ever see the particular driver of it get out before the jeep went into motion?

A I don't understand.

Q Before it started up, moved?

A I see the driver?

Q Did the driver get out and anybody else get in?

A I don't remember seeing anyone else get in.

Q You don't remember seeing anyone else get in?

A No, sir.

Q And you saw the jeep start up and run towards the tent?

A Yes, sir.

Q And were you still in the same position?

A Yes, sir.

Q Well, now, after the jeep struck the tent how far were you away from the jeep at that time? About twice the distance, weren't you?

A No, sir, I wasn't.

Q Well, how far was it?

A I don't know, sir.

Q Farther than from here over to that corner, wasn't it?

A No, sir, it wasn't that far.

Q You were originally eight paces, 7-8 paces from the jeep, before it started up?

A Yes, sir.

Q And it was greater than 7-8 paces than by the time it hit the tent?

A Yes, sir.

Q Think it was as much as 12-15 paces?

A It might have been at least 12 paces.

Q And did you see the driver get out of the jeep?

A No, sir, I didn't see him get out.

Q You didn't see him get out?

A No, sir.

Q When was it you first thought you knew who the driver of the jeep was? When you looked in while he was sitting in the jeep before he started up?

A Yes, sir, I recognized him when I first saw him in it.

Q Are you absolutely certain of that man's identity?

A Yes, sir.

Q You were looking at him from the back?

A I was to the side. I wasn't looking at the back.

Q Now, is your memory better today than it was the other day when I was down in Major Manchester's office talking to you?

A No, sir.

Q It isn't any better?

A No, sir.

Q When I asked you the other day who it was -- let me put it this way. You remember me asking you this question, "Who did you see down there that you know," to which you replied, "Russel Ellis, Nathaniel Spencer, Walter Jackson, Arthur Stone, John Lee Hamilton, Arthur Hurks."

A Yes, sir.

Q Then I asked you further, "Was there any other men you saw down there?" and you answered, no, that you can't remember. Isn't that right?

A I can't remember, sir.

Q Didn't you so testify?

A Yes, I did, sir.

Law Member: I would like to have you give me those names you just read off.

Defense: Russel Ellis, Nathaniel Spencer, Walter Jackson, Arthur Stone, John Lee Hamilton, Arthur Hurks.

Q You never saw any man, any colored soldier in the Italian area, strike anybody?

A No, sir, I didn't.

Q You didn't see anybody damage any Government property?

A No more than the jeep running into the tent.

Q Well, other than what you said about the tent?

A No, sir, I didn't.

Q How big a stick was it down there Nathaniel Spencer had?

A I don't know, sir.

Q What color was it? Was it a green one?

A No, sir, it wasn't.

Q Was it a white one like the white ones over on the wall?

A No, sir.

Q What kind was it?

A It didn't have any color on it at all.

Q How long was it?

A About two feet, three -- two or three feet long.

Q What were the dimensions of it; how big?

A Looked like a 1 x 6, sir.

Q All have the same size clubs?

A No, sir.

Q They were different?

A Yes, sir.

Q When did you leave the area, Italian area?

A I left when the M.P.'s arrived.

Law Member: I missed the question and answer, please.

The Witness: I left directly after the M.P.'s arrived down there.

Q And did you leave the area alone?

A Yes, sir. There was some more, some fellows in front of me and some behind.

Q Who was going back up to the barracks ahead of you?

A I don't know, sir. It was dark all through the area. After we left the orderly room it was dark.

Q You weren't able to tell?

A No, sir.

Q Anybody walking along with you?

A No, sir, there wasn't.

Q During that time you were in the Italian area were there any lights on in barracks number 709 here?

A No, sir, I didn't see any.

Q That was dark?

A Yes, sir.

Q How about building 708?

A It was dark.

Q It was dark too?

A Yes, sir.

Q Now, in building 713, the orderly room, were the lights on in all of the rooms in that building?

A Yes, they were.

Q You are positive of that?

A Yes, sir, I am positive.

Q You are just as positive of that as all the testimony you have given here?

A Yes, sir, I am.

Q Do you recall when I asked you this question down at Major Manchester's office the other day, "Were the lights on in the orderly room?", to which you answered, "Yes, sir"?

A Yes.

Q And I asked you the next question, "In every room?" and you answered, "Yes, sir". I questioned again whether you were sure, and you said, "Yes, sir, all except one room".

A I said lights were in all the rooms.

Q Did you give those same answers the other day when I talked to you in Major Manchester's office I just read here?

A I did, sir.

Q Then you weren't sure the lights were in all the rooms?

Law Member: He answered twice, didn't he, they were on in all the rooms.

Defense: Yes, he knows now they were on in all the rooms, but when I asked him the other day they weren't on in all the rooms.

Law Member: I thought you read two questions where you said, "Are you sure?" and the witness answered, "Yes".

Defense: He answered, "Yes, sir, all except one room".

Law Member: Will you read the first two questions and answers, please.

Defense: (Reading) "Were the lights on in the orderly room? A Yes, sir. Q Are you sure? A Yes, sir, all except one room."

Trial Judge Advocate: If it please the court, of course, what counsel is reading from I don't know what on earth it is about. It isn't testimony. Of course I know the court takes cognizance of that. It is what this witness testifies to and is admitting here.

Defense: I have no further questions.

Trial Judge Advocate: May I proceed with redirect at this time?

President: Yes.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Corporal Ellis, who was present when Major Beeks was questioning you the other day?

A I don't know the name. This Captain here (indicating).

Q The Captain who is Captain Noyd, assistant defense counsel, and Major Beeks?

A Yes, sir, and a lady.

Q And no one else was present?

A No, sir.

Q Major Manchester wasn't present, was he?

A No, sir, I didn't see him.

Q Now, this lady that was present was doing some copying, some writing?

A She was.

Q Now, these various accused I have asked you about today, did or did not Major Beeks ask you about them?

A About --

Q Did he ask you about all these accused I have asked you about today?

A Yes, he did.

Q Now, when he asked you about those accused did you or not give the same testimony you gave today?

A Yes, sir, I did.

Q Did he or not take a list of all the men?

A Yes, he did.

Q Just a minute. Let me finish the question, -- (Continuing previous question.) all of the men who are accused in this case?

A Yes, sir, the ones I called off.

Q The ones you called off?

A Yes.

Q I see. Did he ask you about every one of these 43 -- 42 -- men sitting over there?

A No, sir, he didn't, sir.

Q Now, about how many persons would you say you saw around the orderly room and in the orderly room before the M.P.'s arrived?

A I don't know sir. It was over 75.

Q And you have identified here some 12 or 13?

A Yes, sir.

Q Now, what you saw that evening and what you saw these men do that you have described to the court, was that an unusual or a usual experience to you?

A I don't understand.

Q I mean what you saw that evening when you were standing around the orderly room, was it a usual experience, a common experience, or something unusual?

A It was something unusual.

Q Did it or not make an impression on you?

A It did, sir.

Q Was that as usual an experience, as common an experience, as sitting down at the dinner table and having your mess.

Defense: That is argumentative.

Law Member: Overruled.

Q All right, answer the question, please.

(Question read by reporter).

A I don't quite understand you, sir.

Q The things you saw there around the orderly room --

A Yes, sir.

Q -- (continuing) was that as common an everyday experience to you as sitting down at the mess table?

A No, sir, it wasn't.

Q Do you or not pay any particular attention who sits next to you at the mess table?

A No, sir.

Defense: If the court please, I would like the witness to do some testifying rather than counsel doing it all.

Law Member: I didn't hear your objection.

Q Now, Corporal, Ellis, Major Beeks asked you about John Pinkney wearing an M.P. brassard and being down there at the time the M.P.'s arrived. Now, John Pinkney is a colored soldier, is he not?

A Yes, sir, he is.

Q And did you or not see John Pinkney in the orderly room with the M.P.'s?

A I did, sir.

Q Now, Major Beeks asked you if he wasn't carrying a club. Was he carrying a club or was he carrying an M.P. stick?

A He had an M.P. stick, sir.

Q Now, step over here, will you, and look at these clubs and see if you can pick out any clubs that were similar to those you saw that night in the hands of any colored soldiers you have identified?

A This one (indicating).

Q You picked that one out before.

Defense: I don't think this is proper redirect examination, if the court please. He has already gone into the type of club they had. However, if you want to go into it on redirect, I will be glad to go into it on recross.

Law Member: I think, Major, you went into it on cross examination.

Defense: Well, he brought it out on direct as to what type they had. I had a right.

Law Member: He didn't bring out the type of club Spencer had or the type of club Jackson had.

Q Pick out a club such as you saw on the evening in question?

A This one here (indicating).

Q Look at these over here too. See anything there that was similar to the clubs that you saw that evening?

A This one (indicating).

Q That one?

A Yes, sir.

Trial Judge Advocate: He is pointing to prosecution Exhibit 9.

A Looked a little longer than that.

Q A little longer?

A It was hewed out the same size as this. Maybe it was a little longer.

Trial Judge Advocate: I will assume you agree he pointed to a club that is prosecution Exhibit 9.

Defense: That is true.

Q And who do you recall having a club similar to this one?

A The one I seen Nathaniel with didn't look like this color, but be about the same length. Might have been larger, though.

Q But you can't tell whether it was the same color?

A No, sir.

Q Now, these men whom you said had clubs in their hands, these accused you have identified, state whether or not any of them had M.P. sticks?

A No, sir, I don't remember any of them having M.P. sticks.

Defense: Would you put those sticks away. I don't want them to get mixed up.

Trial Judge Advocate: Yes, I did.

Defense: Is this the last one he talked about? I would like to leave that out.

Trial Judge Advocate: I will offer it in evidence, if you would like me to.

Law Member: Any objection?

Defense: Yes, the same objection I made yesterday, if the Court please. These clubs haven't been sufficiently identified.

Law Member: You understand, Colonel, this stick is not intended to be the stick held by any particular accused.

Trial Judge Advocate: That is correct, similar in size to the stick the witness testified Nathaniel Spencer had, and all I am offering it for is that it is one similar in size.

Law Member: Same ruling as yesterday.

A stick was then marked Prosecution Exhibit 12 and received in evidence.

Q Now, Major Beeks asked you about the identification of some colored soldiers at the PX and a couple other places. How many different colored soldier companies were there at Fort Lawton that you know about?

A That I know about?

Q Yes. Do you know the numbers of any of them?

A Yes, sir, I know quite a few sir.

Q I am speaking now of the different companies, colored soldier companies.

A No, sir, I didn't know any of the other companies.

Q What company were you in?

A 650th.

Q Do you know whether there were any other companies, Negro soldier companies or Port companies?

A Yes, there were.

Q Do you know how many others there were?

A No, sir.

Q Were you or not acquainted with soldiers from the other companies, companies other than your own?

A Well, sir, quite a few. I wasn't very acquainted with many of them.

Q Did you know them as well as the colored soldiers in your own company?

A No, sir, I didn't.

Q And you say you don't know how many other Port companies there were besides your company composed of Negro soldiers?

A No, sir, I don't.

Q Do you know whether or not there were some Negro soldiers came in and joined the company shortly prior to the time there was to be a movement of these companies?

A Yes, sir, some came in.

Q Do you know about how many came in; do you have any idea?

A No, sir. Might have been around 20.

Q In your company?

A Yes, sir.

Trial Judge Advocate: The Prosecution has no further questions.

Defense: I am going to have perhaps an extended recross-examination. Would the Court like to take a recess before I start?

President: The Court will take a 15-minute recess and reconvene at 10:45 a.m.

The Court then recessed at 10:30 a.m. and reconvened at 10:45 a.m., 21 November 1944.

Trial Judge Advocate: Let the record show each of the accused, the personnel of the Court, the personnel of the Defense and personnel of the Prosecution are present.

The reporter was also present.

T/5 Willie Ellis, 650th Port Company, a witness for the Prosecution, was recalled and testified further, as follows:

RECROSS-EXAMINATION

Questions by Defense:

Q Ellis, you think this is the type of stick, referring to

prosecution Exhibit 12, that Nathaniel Spencer had?
A No, sir, it is some resemblance.

Q Similar to that?

A Yes.

Q Didn't you tell Colonel Jaworski you thought that was the stick very much like the one Nathaniel Spencer had?

A Something resembling it.

Trial Judge Advocate: The answer was what, some resemblance?

Defense: Some resemblance.

Q Is this your idea of the stick that was two or three feet long?

A It is.

Q And is that your idea of a 1 x 6?

A I said it could have been larger than that.

Q I asked you if this is your idea of a 1 x 6?

A No, sir.

Q And is this your idea of a stick that didn't have any color on it?

A I couldn't tell whether it had any color on it or not.

Q What do you want this court to understand now; the stick Nathaniel Spencer had was a 1 x 6 or one that is approximately an inch and a half by an inch and a half?

A It looked like a 1 x 6.

Defense: Well, Colonel Jaworski, maybe I haven't referred to this accurately as to the dimensions. It is, though, an inch and a half (measuring stick with ruler).

Q I don't know that you answered my question. Do you want this court to understand now that Nathaniel Spencer had a stick that was a 1 x 6 or one that was $1\frac{1}{2}$ x $1\frac{1}{2}$?

A I didn't understand what you meant.

Q I say, do you want this court to understand now that Nathaniel Spencer was using a stick that was $1\frac{1}{2}$ x $1\frac{1}{2}$ inches rather than a stick that was 1 inch x 6 inches?

A Sir, about that long, but it looked to be larger.

Q You think now it was larger than that?

A Yes.

Q You didn't think that when Colonel Jaworski was asking you the questions.

A It might have been larger.

Q At any time since this night of August 14 have you been held in solitary confinement?

A No, sir.

Q You haven't been at anytime?

A No, sir.

Q You are sure of that?

A Only in the stockade.

Q By yourself?

A No, sir.

Q Separate; by yourself?

A No, sir.

Defense: That is all.

Trial Judge Advocate: The Prosecution has no further questions.

President: Any questions by the Court?

Major MacLennan: About the jeep starting up against the tent. I would like to have that clarified. I am not certain what damage resulted from that.

President: You ask the question of the witness.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q When you described the starting up of the jeep, did that jeep go on into the tent or was it stopped?

A No, sir, it didn't knock the tent down, sir.

Q Did it touch the tent at all?

A Yes, sir.

Q Was there any damage apparent to you to the tent; any damage to the tent that you could see?

A Well, sir, it looked like one of the pieces of wood, 2x4, was kind of broken.

Questions by Law Member:

Q Was anybody in the tent you know of?

A No, sir, I don't know, sir.

Questions by President:

Q I have a question. You testified back here that you saw Riley Buckner when he picked up Alvin Clarke?

A Yes, sir.

Q Who was Alvin Clarke?

A Alvin Clarke was one of the members of our 650th Port Company, sir.

Q 650th Port Company?

A Yes, sir.

Q What was Clarke doing?

A I don't know, sir. I seen him coming out of the orderly room and he fell.

Q You saw him coming out of the orderly room and he fell?

A Yes, sir.

Q It was after that when he picked him up, is that right?

A Yes, sir.

President: Any other questions?

Questions by Law Member:

Q Did some of your boys actually carry him bodily away from the scene?

A Yes, sir.

Questions by Captain Atkinson:

Q Whereabouts was it you saw Walter Jackson?

A He was on inside the orderly room.

Q And then after you saw Sanders and the jeep, then you later saw him with a club?

A Yes, sir.

Q How much later?

A I don't know, sir. Might have been five minutes later or ten minutes later, sir. I don't know exactly.

Q You didn't see him go in the orderly room, did you?

A Yes, sir, I seen him in the orderly room.

Questions by Colonel Stecher:

Q Who was the soldier in his undershirt?

A Nathaniel Spencer.

Q Who was the man in the jeep?

A Robert Sanders, sir.

Q Robert who?

A Robert Sanders.

Q Was the jeep facing the tent with its front end?

A Yes, sir.

Q Or back into it? He moved forward into it?

A Forward.

Q Through which door did you see Robert Sanders move into the orderly room?

A Sir?

Q Through which door did you see Robert Sanders move into the orderly room?

A At the front door, sir.

Q Door A?

A Yes, sir.

Lt. Colonel Stecher: Thank you. That is all.

President: If there are no further questions, the witness will be excused.

Defense: I have one other question.

RECROSS-EXAMINATION

Questions by Defense:

Q What kind of a club did Alvin Clarke have when he came out of the orderly room?

A I didn't see him with any.

Q You want the Court to understand Alvin Clarke was just inside looking around?

A I don't know, sir.

Q You didn't see him with any club at all?

A No, sir.

Defense: That is all.

Trial Judge Advocate: The Prosecution has no further questions.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Staff Sergeant Fred J. Perata, SCU 3983, 28th Italian Quartermaster Service Company, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q State your name.

A Fred J. Perata.

Q Your grade?

A Staff Sergeant.

Q Your organization?

A Present, sir?

Q Yes.

A I am assigned to the 3983 SCU, and attached to the 28th Italian Quartermaster Service Company.

Q You are now stationed where?

A Stationed at Mt. Rainier Ordnance Base, Tacoma, Washington.

Q Where were you stationed and to what organization were you attached on August 14, 1944?

A I was assigned to the SCU 3909 and attached to 28th Quartermaster Service Company.

Q Stationed where?

A Stationed at Fort Lawton, Washington.

Q Do you recall an unusual incident that happened on August 14, 1944?

A Yes, I do, sir.

Q Where were you when you first knew anything about that incident?

A I was asleep in my tent just outside of building 713.

Q Referring to Prosecution Exhibit 2, will you point out to the Court the location of your tent?

A This tent here, sir (indicating).

Q Pointing to the tent to the southerly of the front entrance of the orderly room, building 713.

Law Member: Will you draw a circle around that tent?

(Witness indicates as requested.)

Q What were you doing in the tent; were you asleep?

A I was asleep at the time, sir.

Q What awakened you?

A Three Italians came into the tent. One was Luigi Furlanelli. The three of them awakened me and told me the Negroes --

Defense: I object, if the Court please, to the conversation he had. There hasn't been a background laid to show it is part of the res gestae, and unless such a foundation is shown it is hearsay. I am objecting to it.

Trial Judge Advocate: I can assure the Court it is part of the res gestae. It is the happening of this event and as far as this witness knows it.

Law Member: The objection is overruled but I will entertain a motion if it is not shown to be part of the res gestae.

Q You gave the name of one Italian who came in. Do you know the names of the other two?

A No, I don't, sir.

Q What was said to you at that time, if anything?

A They told me that the Negroes were going through the barracks.

Q What did you do then?

A I immediately slipped on my pants and went to the orderly room, building 713.

Q While you were putting on your pants did anything happen in the tent?

A No, sir.

Q What did you see when you went to the orderly room?

A When I got into the orderly room Sergeant Farr was at the telephone and there were also some Italians in the orderly room; namely, Luigi Furlannelli, because he went immediately to the orderly room after he awakened me.

Q Were there any colored soldiers in the orderly room?

A No, sir.

Q At that time?

A No, sir.

Q Did some subsequently enter?

A Yes, sir.

Q How soon after you arrived there?

A Well, after Sergeant Farr completed the telephone conversation. I would say about 5 minutes after that time.

Q How many colored soldiers entered the orderly room at that time?

A Well, five to ten as far as I can remember.

Q Where were you standing when they entered the orderly room?

A Well, I was standing next to Farr at the telephone.

Q Referring to Prosecution Exhibit 3, which is a floor plan of the orderly room, will you point out the approximate spot at which you were standing when the Negroes entered?

A Standing right here (indicating).

Law Member: Have him put a "P" there.

Q Will you put a "P" at the approximate spot where you were standing?

Law Member: That is on Exhibit 3.

Trial Judge Advocate: On Prosecution Exhibit 3; yes, sir.

(Witness indicates as requested.)

Q Through which door did the Negroes enter the orderly room?

A They entered through Door A and then through D.

Q Who else was in the orderly room with you at that time, if you can recall?

A There was Corporal Haskell, but I don't know where he was right at the time.. He was in the orderly room.

Q Was there anybody else in the orderly room besides you and Haskell?

A There was also Italians.

Q About how many, if you remember?

A I don t recall the number, sir.

Q What did you do when the colored soldiers entered the orderly room?

A Well, as soon as they entered the orderly room I went forward and I said to the Negroes, "I am an American soldier; let's stop this."

Q In what tone did you say that?

A Loud enough to be heard throughout the orderly room.

Q What happened then?

A One of the Negroes struck me over the head with a pyramidal tent pole, sir.

Q Did you see the negro who struck you?

A I saw him but I wasn't able to recognize him at any of the line-ups.

Q What happened after you were struck?

A I immediately fell to the floor and I lost consciousness.

Q Do you recall where you were standing when struck?

A Yes, sir.

Q Referring to Prosecution Exhibit 3, again, which is the floor plan of the orderly room, can you show us where you were standing when yoo were struck?

A In this area right here, sir (indicating).

Q Will you put a P 1" where you were standing?

A (Witness indicates as requested.)

Q Indicating approximately the middle of Room X. I believe you stated you lost consciousness then?

A Yes, sir.

Q What is the next thing that you remember?

A When I regained consciousness I was laying on the floor along this wall (indicating).

Law Member: Between the Doors B and D?

The Witness: Yes.

Q What did you do then, if anything?

A Well, on my own power I dragged myself to the other side of the orderly room.

Q Directly across from where you were lying?

A Yes, sir.

Q When you say you dragged yourself by your own power, what do you mean?

A I crawled on the floor and I didn't get up to go across. I crawled on the floor across the room.

Q Then what happened?

A I lost consciousness again.

Q What is the next thing that you remember?

A I remember being put on a desk approximately in this area here (indicating).

Q Referring to the northerly wall of the orderly room, 713, approximately in the center, is that correct?

A Yes, sir.

Q What happened then?

A Well, the Italians noticed that I was bleeding and one of them took off his undershirt and started to bind me up.

Q Sergeant, what injuries did you sustain that evening?

A First of all my skull was fractured, which developed into a facial paralysis. Then I was stabbed in the upper chest in this region (indicating), and I had a third rib broken. I was also stabbed in the small of the back and slashed in the groin.

Q What was that last?

A I was slashed in the groin, which severed the nerves and some of the muscles in my leg. That is the right leg.

Q Have you completely recovered from your injuries?

A No, sir.

Q What effects do you still have?

A My left ear still rings; my right leg is still stiff.

Q Do you know when you received the wounds in the back, side and groin?

A I do not, sir.

Q Where were you taken when you left the orderly room, Sergeant?

A I was taken outside, put into a truck, and taken up to the unit hospital number 1.

Q How long did you remain in the hospital?

A At unit hospital number 1---you mean that, sir?

Q Did you remain right there?

A Then I was taken to unit hospital number 2 from there.

Q How long did you remain in hospital unit number 2?

A Forty days.

Q Sergeant, were there lights on in the orderly room when you entered it?
A Yes, lights were on in Room X at the time I entered.

Q How many lights?
A There were only two lights in the orderly room. They were both on.

Q Do you know what size bulb was in the light?
A I would say between 150 and 200 watt.

Q What, if any, lights were there on the outside of the orderly room?
A There was a light outside of Building 713, that would be over Door A, and that was on when I walked in. There was also a light on over the latrine door.

Q The latrine is which building as shown on Prosecution Exhibit 2?
A I think it is 712. 712 (indicating).

Q Building 712. Sergeant, what is the fact as to whether or not the partitions reached the ceiling in the orderly room?
A The partitions did not reach the ceiling.

Q About how far up did they extend, if you know?
A Oh, I would say about eight feet.

Q How far from the ceiling?
A I would say about three feet, sir; approximately three feet, sir.

Q You stated that you could not identify the negro that struck you over the head?
A No, sir.

Q Can you identify any other negroes that you saw that night?
A No, sir.

Q What enlisted American personnel besides yourself was attached to the 28th Italian Quartermaster Company?
A Present that night, sir?

Q That night.
A There was Sergeant Farr, Corporal Haskell, and PFC Gould.

Q Do you know now where PFC Gould is?
A Yes, sir.

Q Will you tell the Court where he is?
A PFC Gould is now at Halleran General Hospital in New York.

Q Do you know where Gould slept when he was attached to that Company?
A Yes, sir, Gould slept in the same tent that I slept in.

Q Was he in that tent that night when you were awakened?

A Yes, sir. He remained in the tent when I left for the orderly room.

Q When did you last see Gould?

A That was the last I saw of Gould.

Q Do you know what happened to him?

A Yes, I do, sir.

Defense: Just a moment. If the Court please, before he asks any further questions I think it should be established, some showing, this witness saw what happened to Gould with his own eyes, or whether his information is based on something somebody told him.

Law Member: I think that is sound.

Q Sergeant, did you see a jeep that night in the vicinity of your tent?

A Yes, sir, it was parked outside of the orderly room.

Q Did you see the jeep operating at anytime?

A No, sir.

Trial Judge Advocate: I have no further questions at this time.

Defense: The Defense has no questions, if the Court please.

President: Any questions by the Court? There appears to be none. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: While we are waiting for the next witness, I might say I overlooked at the conclusion of the testimony of Willie Ellis to introduce this letter similar to the one I introduced in the case of Roy Daymond, granting immunity to Willie Ellis and signed by Brigadier General Denson.

Law Member: No objection?

Defense: I have no objections.

Law Member: It will be admitted in evidence.

Trial Judge Advocate: It has been admitted, has it?

Law Member: Yes

The letter granting immunity from prosecution to T/5 Willie Ellis, dated 6 November 1944, was marked Prosecution Exhibit 13 and received in evidence.

The Trial Judge Advocate then read Prosecution Exhibit 13 to the Court.

T/5 Edward S Haskell, 28th Italian Quartermaster Service Company, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please state your name.

A Edward S Haskell.

Q H-a-s-k-e-l-l, is that correct?

A Yes, sir.

Q Your grade?

A Technician 5th grade.

Q And your organization?

A Assigned to SCU 3983; attached to 28th Italian Quartermaster Service Company.

Q And your station?

A Mt Rainier Ordnance Depot, Tacoma, Washington.

Q Corporal Haskell, what was your assignment and your station on August 14, 1944?

A I was assigned to SCU 7909, attached to 28th Italian Quartermaster Service Company, Fort Lawton, Washington.

Q Did anything occur on the evening of August 14, 1944, of an unusual nature?

A Yes, sir.

Q At Fort Lawton, Washington?

A Yes, sir.

Q Where were you at the time of that occurrence, Corporal?

A I was sleeping in Building 713.

Q And in which room in Building 713 did you sleep, and I will ask you to step up here to Prosecution Exhibit 3 and point out the room. This is a floor plan of 713.

A I was sleeping in Room Z.

Q Anyone sleeping in there with you?

A Yes, sir, Sergeant Farr.

Q What awakened you on this particular occasion, Corporal?

A I was awakened by several Italian soldiers coming into Building 713 and crying that the negroes were going through their barracks.

Q And after you were so awakened, what did you do?

A I immediately got up and went to the phone; called the military police.

Q Were you able to reach the military police?

A Sergeant Farr had gotten there before me and he made an attempt to get the officer of the day.

Q Were you then able to reach the military police?

A No, sir, he didn't get an answer upon calling the officer of the day and he immediately called the guard house.

Q And was an answer received there?

A Yes, sir.

Q All right. After that about how long was it do you estimate before the military police arrived?

A Not less than 30 minutes, sir.

Q Now, at the time that this occurred, after the call was put into the guard house, what happened next?

A About that time rocks were being thrown at the orderly room and through the windows.

Q Right there, were the windows open or closed?

A Sergeant Todde, one of the Italian sergeants, had closed--- excuse me---had opened the windows on one side of Room X and the other windows were closed.

Q Will you point out the windows opened and those closed?

A These three windows in Room X were open, and the windows in Room Y, Z and R were closed.

Q When you say the three windows up here, those were the three windows, the only three windows, that there are to Room X?

A Yes, sir.

Q And they were each open?

A That is correct, sir.

Q And the window in Room Y, the window in Room Z, and the window in Room R, you say, were closed?

A That is correct, sir.

Q What about Door E?

A Door E was closed but was not locked at that time.

Q What about Door D?

A Door D was open, sir.

Q What about door A?

A Door A was closed.

Q Now, when rocks were thrown through the windows, were they thrown through open or closed windows?

A At first there were screens over the windows and then the

screens were removed and the rocks---

Q (interrupting) Right there, the screens were removed, were they removed by you folks inside the orderly room or folks on the outside of the orderly room?

A On the outside, sir.

Q Now, after the screens were removed what happened?

A The rocks were thrown through the windows.

Q Breaking the glass?

A Yes, sir.

Q And did you observe whether or not any clubs were used or sticks were used on the windows?

A No, sir, I did not.

Q Now, state whether or not you saw any colored soldiers around this side of Room X, which is the side that has the windows?

A No, sir, I didn't see any soldiers there.

Q Did you see any colored soldiers on this side of the orderly room, the side where the window to Room Y and window to Room Z is?

A Yes, sir.

Q Can you estimate about how many you saw there?

A I would say approximately twenty, sir.

Q What were they doing?

A They were running back and forth along that side of the orderly room.

Q Did you observe whether anything was thrown by any of them?

A No, sir, I did not.

Q About how many rocks came inside of the orderly room, would you say; have you some idea?

A Fifteen or twenty, sir.

Q Were they small rocks or large rocks?

A Various sizes.

Q Will you step over here a minute and give us some idea what the size of those rocks were. Do you see anything here that resembles them? I wish you would point them out if you do.

A All of those rocks (indicating).

Q Does that include the bricks, too?

A Yes, sir.

Q Let me make sure I understand your testimony. Your testimony is that inside of the door to the room, thrown from the outside, were rocks and bricks of these sizes?

A Yes, sir.

Q As many as these?

A Yes, sir, if not more.

Trial Judge Advocate: If the Court please, I want to offer all of this in evidence, and, of course, I would like to have permission of the Court at the conclusion of the case to withdraw these exhibits because they are exhibits that can't be forwarded with the record.

Law Member: Any objection, Major?

Defense: Same objection I have made heretofore. It is not sufficiently identified as being the particular rocks or particular bricks.

Law Member: I don't believe the offer is intended for that, as I understand it. Witness, rocks of at least this many were thrown through the windows of the orderly room on the night in question, is that correct?

The Witness: That is correct.

Law Member: And were of similar size and shape?

The Witness: Yes, sir.

Law Member: You can't identify any particular rock in this box, in the offered exhibit, as being actually one of the rocks that were thrown through the windows on that night?

The Witness: Yes, sir, I can.

Law Member: You can identify one of the rocks?

The Witness: Yes, sir.

Law Member: Will you pick out that particular rock?

The Witness: This large rock, sir (indicating).

Law Member: Now, in what way do you identify that as being one of the rocks that was thrown through the window?

The Witness: I noticed it particularly, sir, because of its size, and I was in the orderly room all the following morning, and I had a good chance to look the place over and I commented that it was such a large heavy rock I couldn't see how it could have been thrown such a large distance.

Law Member: Have you any particular markings on that rock you identified now?

The Witness: No, sir; just the shape.

Law Member: Are there any other rocks in there that you can identify?

The Witness: No, sir.

Law Member: With the understanding that the offered exhibit represents rocks of similar size and shape and of the number which were thrown through the windows of the orderly room, I will overrule your objection and receive the whole box marked as Prosecution Exhibit No 14.

A box containing rocks and bricks was received in evidence and marked Prosecution Exhibit 14.

Q Corporal Haskell, you have told us about the colored soldiers you saw moving around and standing around the windows. Did you see any of them have anything in their hands?

A Yes, sir.

Q What did they have in their hands?

A They carried clubs and rocks, sir.

Q All right. Did at any time while you were there any colored soldiers enter the orderly room?

A Yes, sir.

Q All right. About how many first entered the orderly room?

A Between fifteen and twenty, sir.

Q Now, what was their means of entering?

A They entered Door A and then proceeded through Room R and then to Door D.

Q Was Door A closed?

A It had been opened, sir.

Q By whom?

A By the Negro soldiers.

Q When they came to Door D was Door D open or closed?

A At the time I saw them it was closed, sir.

Q How did they effect entry through Door D?

A The door was chopped down.

Q With what?

- A An ax.

Q Did you see the ax?

A Yes, sir, I saw the blade coming through the door.

Q Did you see the entire ax or just the blade?

A Just the blade, sir.

Q Was there anyone attempting to hold the door at the time

the ax was being used to chop it down?

A Before the door was actually chopped down there were two Italian soldiers there, but as soon as they saw the blade coming through the door they left the door.

Q Did the blade of the ax come anywhere close to either of those Italian soldiers standing at the door, or could you tell?

A No, sir, it was much higher.

Q It was higher?

A Yes, sir.

Q Much higher, I think you said?

A Yes.

Q Now, after the door was chopped down how many colored soldiers came into Room X?

A Six or seven, sir.

Q What did those six or seven do?

A That I couldn't say, sir.

Q As they came into Room X, did you do anything?

A No, sir. My attention was concentrated on the soldiers who were coming through door B.

Q Now, at the same time then were some colored soldiers coming through this door B?

A Yes, sir.

Q Had Door E been closed?

A It had been locked, sir.

Q Well, who opened it?

A Negro soldiers.

Q And about how many colored soldiers, Negro soldiers, came through door E to door B?

A Approximately ten, sir.

Q Now, did you have occasion to look into Room Y at any time?

A Yes, sir.

Q Who was in Room Y? I don't mean the names of the soldiers, but can you tell us, if you can't give the names, the persons.

A Well,---

Q (interrupting) I mean whether they were American soldiers, or Italian soldiers, or white soldiers, or whether they were Negro soldiers?

A I would say five or six Italian soldiers.

Q Were in Room Y?

A Yes, sir.

Q Were they the Italian soldiers that had come to the orderly room after this incident started?

A Some of them were, sir.

Q And who was in Room X before the colored soldiers entered?

A Several Italian soldiers, Sergeant Farr and myself.

Q Sergeant Farr, you and several Italian soldiers?

A And Sergeant Perata.

Q Was anyone in Room Z before?

A Yes, sir.

Q Who was in Room Z?

A Several Italian soldiers.

Q Was anyone in Room R before the Negro soldiers entered?

A No, sir.

Q After the Negro soldiers entered Room X did you or not see them make use---let me ask this, first. The Negro soldiers that entered Room X, were they or not armed?

A Yes, sir, they were.

Q With what?

A Clubs and rocks.

Q Did you or not see any of them make use of their weapons?

A No, sir, I did not.

Q You did not see anyone do that. All right. What were you doing during that time?

A I was standing approximately in the middle of Room X at the time the soldiers simultaneously came through Door D and Door B and I was confronted by one Negro soldier, whom I spoke to and explained that we were American soldiers and that Sergeant Perata had been injured severely.

Q At that time Sergeant Perata had already been injured?

A Yes, sir.

Q Well, how do you know that?

A I had seen him on the floor and he had been moved to the other side of the room and he was bleeding badly.

Q Did you actually see the striking of Sergeant Perata?

A No, sir.

Q All right; go on with your story. You were explaining to the Negro soldier you were American personnel, American soldiers.

A And about that time I was struck from behind and pushed through door B into room Z, and I would say about 3 to 5 minutes the M.P.'s come.

Q Now, will you tell---

Law Member: I didn't get that; which room he was pushed into.

TheWitness: I was pushed through Door B into Room Z.

Q Do you know whether or not Sergeant Farr was injured that evening?

A Yes, sir, I do.

Q Now, was or not Sergeant Farr taken away from that orderly room at any time?

A After I was shoved through Door B I did not see Sergeant Farr until later on in the evening.

Q You say you did not see him until later on in the evening?

A Yes, sir.

Q You mean you didn't see him any more around the orderly room after that?

A Until approximately 25 minutes.

Q Where did you see him in 25 minutes after that?

A I saw him outside the orderly room and then we went into room Z, where we discovered he was injured.

Q Was he or not bleeding?

A Yes, sir, badly.

Q I believe you stated you saw Sergeant Perata injured. Did you do anything about that?

A Yes, sir, I attempted to move him from the door over to the other side of the room, but I wasn't successful, sir.

Q Was he on the floor?

A Yes, sir.

Q Did he appear to be badly injured?

A Yes, sir.

Q All right. Now, I want you to walk over to the accused and look them over carefully and tell the Court if you see anyone among them whom you saw in the orderly room on the occasion in question.

A Yes, sir, I do.

Q Will you point him out?

A This man here (pointing to one of the accused).

Q This one right here?

A Yes, sir.

Q Anyone else?

A Yes, sir. This man right here (pointing to one of the accused).

Q Do you know the names of either of them?

A Yes, sir.

Q What are their names?

A Roy Montgomery, sir, and Willie Basden.

Q Did you know their names on the night in question?
A No, sir.

Q You have since learned their names?
A That's right, sir.

Law Member: Who was it besides Montgomery?

Trial Judge Advocate: Willie Basden. Roy Montgomery was the other one. Now, I am going to ask the court, as we did yesterday, to have the two that were pointed out to rise and state their names, just as was done yesterday.

Law Member: I so order.

Thereupon the two accused pointed out by the witness arose and announced their names, as follows: Private Willie C. Basden; Roy L Montgomery, Pfc.

Q Are those the only two you recognized among that group?
A Yes, sir.

Q Did you previously pick them out from a show-up?
A Yes, sir.

Q The same two men?
A That's right.

Q All right. Now tell us first about the accused Willie Basden.
What did you see him do?
A He was waving a club, sir.

Q Waving a club?
A Yes, sir.

Q Will you tell the court, point out on this map, please, where you saw him wave this club?
A Standing approximately here, sir (indicating).

Q Approximately in Door B?
A Yes, sir.

Q Was there anyone behind him?
A Yes, sir.

Q Were you able to identify the man that was behind him?
A No, sir.

Q Was he a colored soldier, Negro soldier?
A Yes, sir.

Q Did he have anything in his hand?
A Yes, sir.

Q What did he have in his hand?

A A knife, sir.

Q What kind of a knife?

A It looked to me like a large hunting knife, sir.

Q Will you step over here a minute and see if you see any knives that are similar in appearance to the knife that you saw this colored soldier hold in his hand?

A I would say it was this type, sir (indicating).

Q Is this approximately the size knife and the type of knife?

A Yes, sir.

Trial Judge Advocate: If it please the Court, I offer it in evidence as a knife similar to the one that this witness saw in the hands of a colored soldier behind Willie Basden.

Law Member: Are you objecting, Major?

Defense: Same objection, if the Court please.

Law Member: Same ruling with the same understanding.

A knife was then marked Prosecution Exhibit 15 and received in evidence.

Q Where did you see the accused Private Roy Montgomery on the occasion in question?

A About here, sir (indicating).

Q That is in room X close to door B?

A Yes, sir.

Q And what was he doing?

A Nothing, sir. He was just standing.

Q Did he have something in his hand?

A I don't know, sir.

Q You didn't notice that?

A No, sir.

Defense: Who was this?

Trial Judge Advocate: That was Private Roy Montgomery.

Q Now, at what stage of the proceedings or stage of this matter did you see Private Roy Montgomery in Room X?

A That was the time that Door D was being chopped down.

Q The time door D was being chopped down. Did he come through Door D or through the other door?

A Came through Door B.

Q Can you tell whether other soldiers, colored soldiers, had entered through door B before Private Montgomery did?

A Yes, sir, he pushed his way through.

Q Pushed his way through?

A Yes, sir.

Q Did you have any conversation with him?

A Yes, sir. He was the man I told that we were American soldiers.

Q Did he give you any reply?

A Yes, sir, he said, "We don't want you".

Q Did he tell you who he did want?

A No, sir.

Q He just said, "We don't want you"?

A Yes, sir.

Q Do you or not know the exact time that Sergeant Farr left the orderly room while this matter was in progress?

A No, sir, I do not.

Q Do you know whether or not he left the orderly room before the M.P.'s came?

A Yes, sir, he did leave before the M.P.'s came.

Q Would you say how long before the M.P.'s arrived he left the orderly room, or could you estimate how long that was?

A I would say five or ten minutes.

Q Now, what type of light, if any, was there in the orderly room while this matter was going on?

A There were 200 watt globes.

Q Two of them?

A No, sir, there were two that were lit in room---one in room X and one in Room Z, and also one in room R, sir.

Q In other words, there were three in all?

A Yes, sir.

President: All 200 watt bulbs?

TheWitness: Yes, sir.

Q Would you state whether or not there was a light over door A of the orderly room?

A Yes, sir, there was.

Q Was it on the outside?

A Yes, sir.

Q Was it burning that night?

A Yes, sir.

Q Do you know whether or not there was a light on the outside of the latrine?
A Yes, sir.

Q Was it burning that night?
A Yes, sir.

Q That latrine, I believe, is building 712, isn't it?
A That is correct.

Q Yes, '712. The partitions that are indicated on this map, Prosecution Exhibit 3, did they extend all the way to the ceiling?
A No sir.

Q Only part way. State whether or not the light would reflect, the light in the rooms as you have described it, would reflect into those rooms over the partitions?
A Yes, sir, they did.

Q Were the lighting fixtures fastened right to the ceiling, close to the ceiling, or did they hang down any distance, or what was that arrangement?
A They hung down from the ceiling.

Q About how far, do you know?
A About two feet, sir.

Q And were any reflectors on them or just the globes hanging down?
A Just the globes, sir.

Q Did you observe any Italian soldiers in the orderly room on the occasion in question that appeared to be injured?
A Yes, sir, I did.

Q Will you tell the court about those, please. Tell us who they were.
A The Italian Captain John Collentani was laying beneath the window in room Y unconscious.

Q Who else did you see?
A Sergeant Bigatti was leaning against the wall of Room X by Door C. He was bleeding from the head and coughing violently.

President: Where was he lying?

TheWitness: He was leaning against the wall by door C.

Law Member: By door what?

The Witness: Door C.

Lt. Colonel Stecher: In room X?

The Witness: Yes, sir.

Trial Judge Advocate: That is room Y, I believe, sir.

The Witness: No, sir, he was in room X.

Q I beg your pardon. That is the door between room X and Room Y?
A Yes, sir.

Q All right, who else?
A An Italian soldier by the name of Ferrante was in room Z against the partition dividing room Z from room X. It seemed as though he had been hit across the nose and was also unconscious.

Q See anyone else?
A An Italian soldier by the name of Fugazza.

Q What about him?
A He was covered with blood. I don't know exactly what his injury was.

Q Where did you see him?
A I saw him in room X.

Q Was he laying on the floor?
A No, sir, he wasn't.

Q Standing up?
A Yes, sir.

Q All right. Who else did you see?
A Sergeant Perata, Staff Sergeant Perata.

Q What did you observe about Staff Sergeant Perata?
A He had been stabbed in two places that I could see and was bleeding badly.

Q See anyone else?
A And after the M.P.'s had come I saw Sergeant Farr once more and he had been stabbed through the arm.

Q Do you know an Italian soldier by the name of Furlanelli?
A Yes, sir.

Q Did you see him in the orderly room that night?
A Yes, sir, I did.

Q Did he appear to be injured or not?
A Yes, sir, he had been struck with a rock under the left eye.

Q Do you know an Italian soldier by the name of Boari?
A Yes, sir.

Q Did you see him that night?
A Yes, sir, I did.

Q Did he appear to be injured or not?
A He seemed to have been struck across the back several times.

Q Now, you told the Court something about your having been struck. Where were you struck, Corporal Haskell?
A Across the back, sir.

Q Did someone push you about the time you were struck?
A Yes, sir.

Q You don't know where the blow would have landed had you not been pushed, do you?
A No.

Q Could you tell where it was aimed at by the way the blow came?
A Yes, sir, I would say it was aimed at my head, sir.

Q Just tell the Court what happened; describe how you were pushed and what happened at that particular time, as nearly as you can?
A As near as I can remember, I felt the blow and stumbled forward approximately at the same time, and the blow struck in the small of my back.

Q Do you know who it was pushed you forward about that time?
A I didn't know at the time, sir.

Q You didn't see who it was?
A No, sir.

Q You have since learned who it was?
A Yes, sir.

Q How many Negro soldiers in all did you see enter the orderly room that evening prior to the time the M.P.'s arrived?
A About 35, sir.

Q By the way, do you know an Italian soldier by the name of Sergeant Todde?
A Yes, sir.

Q Did you see him that evening?
A Yes, sir.

Q That is T-o-d-d-e. Where was he?
A He was in Room Z.

Q And what was he doing?
A At the time I saw him he was looking out the window of room Z and I didn't see him any more that evening.

Q Did you or not observe whether he was injured in any way?
A At that time he was not injured, sir.

Q You didn't see him any more in the orderly room that evening?
A No, sir.

Q Were you taken to the hospital?

A No, sir, I wasn't.

Q Did you go to the hospital yourself later?

A The following morning, sir.

Q What was the purpose of your visit to the hospital?

A To identify the body of the man who had been hung, and also to check up to see what Italian soldiers were missing.

Q Did you identify the body of that soldier?

A No, sir. The body had been moved.

Q You weren't called on actually to make the identification then, were you?

A No, sir.

Defense: If the Court please, I am going to ask at this time to be stricken from the record, and all members of the court to disregard the statement of this witness, he went to see the body of the man who had been hung. There is absolutely no testimony before this court at this time this man has been hung.

Trial Judge Advocate: That is agreeable. I have no objection. As a matter of fact, I didn't know the witness had even been there.

Law Member: We will strike it out.

Q Now, did you receive any treatment yourself at the hospital?

A No, sir, I did not.

Q The blow in your back wasn't sufficiently severe to require treatment?

A That is correct, sir.

Q Was there or not some assaulting still in progress in the orderly room after Sergeant Farr left?

A Yes, sir, there was.

Trial Judge Advocate: The Prosecution has no further questions, if it please the Court.

Defense: It being now 12:00 or lacking a few minutes thereof, I would suggest we take the noon recess before I start the cross-examination.

President: The court will recess and reconvene at 1:30 p.m.

The court thereupon recessed at 12:00 noon and reconvened at 1:30 p.m., 21 November 1944.

Law Member: Colonel Jaworski and Major Beeks, it occurs to me, referring to Prosecution Exhibit 14, which is a box of rocks,

I think you two gentlemen should count the rocks and describe it in the record.

Trial Judge Advocate: Would you wish that done now?

Law Member: No, except we be sure and get the number in the record.

Trial Judge Advocate: Fine, sir. We will attend to that during the first recess.

Defense: That is entirely agreeable to me.

President: The Court will come to order.

A roll call was then conducted by the Assistant Trial Judge Advocate of the accused, seated in the courtroom, all of whom answered in the affirmative.

Defense: I am just wondering, if the Court please, if the reporter is showing this roll of the accused being taken in each session of Court, before the Court and in the present of the Court.

The Reporter: Yes, sir.

Trial Judge Advocate: Is that satisfactory?

Defense: I want the record to so show, yes.

Trial Judge Advocate: Let the record further show that not only each of the accused is present but the personnel of the Court, as well as the personnel of the Defense and of the Prosecution, are all present.

Defense: That is correct.

Law Member: And as each name is called each of the accused remains seated and simply answers, "Here, sir."

Defense: In that connection, may it please the Court, may the record also show definitely---I am not sure that it does---that the Court has been requiring upon identification of the witness that the witness stand before the Court to give his name.

Law Member: I don't believe that has happened.

Defense: I think, if the Court please, that has happened on every occasion.

Law Member: They have not been standing up; simply giving their names, as I recall.

Defense: I believe that is true this morning, but I believe at the first session they were required to stand.

Law Member: Some members of the court are of the opinion that yesterday when identified by a witness the accused would stand up.

Defense: I think that is correct.

Law Member: And gave their names and rank. That certainly should appear in the record.

Trial Judge Advocate: And stood in front of their seats and did not stand before the court in doing it.

Law Member: That's right.

Defense: That is correct. Do you have any further questions of Corporal Haskell?

Trial Judge Advocate: No, no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Corporal Haskell, if I understood you correctly in your direct examination, you were in room X when a small group of colored soldiers entered room X through door D, is that correct?

A That is correct, sir.

Q And that later those soldiers that originally entered retired from room X through door D?

A That is not while I was in room X.

Q That wasn't while you were in room X?

A No.

Q Well, were you later in room X at a time after the first colored soldiers entered when there were no more colored soldiers in room X?

A Yes, sir.

Q Now, door D was closed again at that time, wasn't it?

A Yes, sir.

Q Now, was door D barricaded at that time?

A With a small stick, sir.

Q With a small stick?

A Yes, sir.

Q There wasn't any furniture or desks or tables moved over against the door?

A No, sir.

Q You are sure of that?

A Yes, sir.

Q Now, if anyone else here has testified there were tables or chairs, or something of that nature, moved against door D, you believe that they would be mistaken?

A Yes, sir.

Q Now, Corporal, the man you identified as Montgomery you saw standing in doorway B?

A That is correct, sir.

Q And you had some conversation with him at that time?

A Yes, sir.

Q Did you have any conversation with any other of the colored soldiers that were there that evening?

A No, sir.

Q Montgomery was the only man that you had any conversation with?

A Yes, sir.

Q Was Sergeant Farr present at the time you had that conversation?

A Yes, sir.

Q Did he participate in the conversation?

A Yes, sir.

Q To your knowledge did Sergeant Farr have any conversations with any of the other colored soldiers that evening?

A Not to my knowledge.

Q And you feel quite positive the man you talked to at that time in doorway B was Montgomery?

A Absolutely.

Q Now, were you down at Camp Jordan, Corporal, when there was a show-down as counsel called it, where you were given the opportunity to identify certain colored soldiers?

A Yes, sir.

Q Now, when was the first time that you were extended that opportunity?

A I believe the date was August 21st.

Q August 21st?

A Yes, sir.

Q How many men did you identify at that time?

A Two, sir.

Q Just two?

A Yes, sir.

Q No more than that?

A No, sir.

Q Then later on you saw those men again?
A Yes, sir.

Q That was down at the Port?
A Yes, sir.

Q And you saw them in a room by themselves at that time, didn't you?
A Yes, sir.

Q You weren't required or asked to identify or select a man out of a larger group?
A No, sir.

Q Well, just what happened. Were the men already in a room when you came in, or were you in a room and the individuals brought in?
A The men were in the room, sir.

Q They were in the room?
A Yes, sir.

Q Now, you later had some pictures mailed to you, didn't you?
A No, sir, they were not mailed to me.

Q Well, they were mailed to the Commanding Officer where you are stationed and given to you?
A I couldn't say they were mailed. They were in the organization.

Q I understood you to tell me when I talked to you the other day they were mailed. Maybe I am mistaken.
A I believe I said I wasn't sure, sir.

Q In any event, they weren't handed to you by Colonel Jaworski or any other officers who investigated this case?
A No, sir.

Q You went over to headquarters and asked for them?
A No, sir.

Q Well, tell us how you got hold of the pictures?
A They were in the orderly room, but one of the Italian soldiers had them.

Q Did someone tell you they would send you down some pictures of Montgomery and Basden?
A No, sir.

Q How did you happen to go over there and look for them?
A I didn't look for them, sir. They were handed to me and I glanced through them, and that is all there was to it.

Q They were handed to you. Was that shortly after a time when somebody had been down there to see you?
A Yes, sir.

Q Now, those were pictures that had Basden's name on them and Montgomery's name also?

A Yes, sir.

Q And those pictures were available down there to you for some period of time, were they, Corporal?

A I only saw them once.

Q You only saw them once?

A Yes, sir.

Q On one occasion. Was there a letter attached to the pictures or anything of the kind?

A No, sir.

Defense: That is all the questions I have.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Corporal, when pictures of colored soldiers were first handed to you the one time you saw them, were those just pictures of Basden and Montgomery or were they pictures of a larger number of Negro soldiers?

A A large number, sir.

Q And did you or not pick out Basden's and Montgomery's picture at that time?

A I did pick them out, sir.

Q And had you picked out Basden and Montgomery before at the very first show-up?

A Yes, sir.

Q And did you pick the same men up again the second time?

Defense: I think it is time the witness was permitted to testify. I don't like to continually and continually object, but the questions are so leading they suggest the answers.

Law Member: At the time you elect to object, will you please object, Major.

Defense: I think the court might instruct counsel to quit asking leading questions of that kind. I don't like to be bouncing up every second and objecting.

Law Member: Well, Colonel, you will cease asking leading questions, but Major, when you are going to make an objection for ruling please make it in proper form.

Defense: All right, sir. He asks his questions so fast I don't get the opportunity most of the time to get an objection in before the question is answered.

Law Member: I know, but you don't object. You get up and say, "I think it is about time you stop doing something". You make an objection in the proper form and give me the grounds and I will rule on it to the best of my ability.

Defense: Very well.

Q All right. Corporal Haskell, Major Beeks has asked you about the show-up, the very first time that you were asked to identify any Negro soldiers that you saw in the orderly room. Where was that show-up held?

A Camp Jordan.

Q At that time state whether or not Willie Basden and Private Roy Montgomery were brought before you or were a large number of Negro soldiers brought before you?

A A large number, sir.

Q Can you say about how many?

A I believe there were two companies, sir.

Q Two entire companies?

A Yes, sir.

Q And did you pick anyone out of that show-up consisting of two entire companies?

A Yes, sir.

Q Who did you pick out?

A Willie Basden and Roy Montgomery.

Q The same men you identified today?

A Yes, sir.

Q All right. Then the next time I believe you told Major Beeks was at the Port, is that correct?

A That is correct, sir.

Q Did you at that time or not identify any one as having seen them in the orderly room that night?

A Yes, sir, I did identify them.

Q And who was it you identified?

A Willie Basden and Roy Montgomery.

Q Now, is there any doubt in your mind as to the identification of Private Willie Basden and Private Roy Montgomery as the two men you have told the court about today?

A No, sir.

Q Was there ever any doubt in your mind about it?

A No, sir.

Q Was there at the time you first pointed them out, selected them from the show-up?

A No, sir.

Trial Judge Advocate: The prosecution has no further questions.

RECROSS-EXAMINATION

Questions by Defense:

Q Who was it told you, Corporal, the names of these men?

A Major Manchester.

Q Major Manchester?

A Yes, sir.

Q Then when a group of pictures came down to you, each labeled with the man's name on it, it wasn't any great job for you to pick out Montgomery and Basden's picture; was it?

A No, sir.

Defense: That is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q How many men, Corporal, were present in the showdown at the Port?

A Italians, sir, or American soldiers?

Q American soldiers.

A Of our present company?

Q No, you say that you made a subsequent identification at some time after August 21st at the Port of Embarkation.

A Yes, sir, there was an investigating committee, sir, and the Negroes accused.

Q All of them were in the room?

A No, sir, just that particular man.

Q Montgomery and --

A (Interrupting) And Basden.

Q --(continuing) and Basden. Were the pictures labelled Basden and Montgomery, when they were shown to you in the orderly room, were they the pictures of the men you identified out at Camp Jordan?

A Yes, sir, they were.

Law Member; That is all.

President: Any further questions by any members of the court?

Law Member: Just one more question.

Questions by Law Member:

Q Corporal, see if I get it right. Did I understand you to say that 30 minutes elapsed from the time the military police were called until they showed up?

A Yes, sir. That is an approximate guess. I am not absolutely sure of the time, sir.

Q 30 minutes?

A Yes, sir.

Law Member: That is all.

Questions by President:

Q I would like to ask a few questions along that line, Corporal. From the time that the Italians first came into the orderly room until the time the telephone call was completed, how long do you think that was?

A Not more than two minutes.

Q How long was it from that time until the first rock hit the building, approximately?

A Five minutes, sir.

Q There was a five minute gap between the time you finished telephoning and the time the first rock hit the building?

A Yes, sir.

Q What did you do in the meantime -- all that five minutes?

A Well, sir, several of the Italians tried to push desks against the door, but not realizing the seriousness of the incident, I refused to allow them to barricade the doors and tried to keep them as quiet as possible. There were, oh, maybe twenty Italians who had rushed into the orderly room and I tried to calm them down some.

Q Could you hear any noise outside during that period?

A Yes, sir, there was quite a bit of hollering and yelling, sir.

Q After the first rocks hit the building how long was it before the first colored soldiers came into the room?

A I would say almost immediately, sir.

Q Was it at this time that Sergeant Perata was injured?

A Yes, sir.

Q As I understood the testimony, after this the colored soldiers left the room again, is that correct?

A That is correct, sir.

Q How long were the colored soldiers in the room from the time that they first came in until they left the first time?

A I would say five or ten minutes, sir.

Q Do you know why they left the room?

A No, sir, I don't know.

Q You were still there when they left?

A I was in room Z at that time.

Q You were still in the building?

A Yes, sir.

Q And that was before you had been hurt?

A Yes, sir.

Q After the colored soldiers left the room, how long was it before they came in again?

A Sir, the door was barricaded and was chopped down. I would say at least five minutes, sir.

Q You were able to barricade all the outside doors or lock all the outside doors before --

A Door D was locked.

Q Door D was locked and barricaded?

A Yes, sir. And door E had been locked earlier in the evening and that had not been broken into as yet.

Q And you think it would be about five minutes between the time that they left before they came back in?

A Yes, sir.

Q And how long was it after they came back in before you were struck?

A Just a couple of minutes, sir.

Q And I am not quite clear as to what happened after you were struck and pushed back into room Z. I believe that is what you testified?

A That is correct, sir.

Q It was before the M.P.'s came?

A It was almost immediately, sir.

Q The M.P.'s came almost immediately after you were struck?

A Yes, sir.

President: I have no further questions. Does anyone else have any questions?

Questions by Law Member:

Q During the course of this affair were there any remarks made by any colored soldiers that you remember?

A Yes, sir, at the very beginning one colored soldier cried out to the Italians, "Come out and fight", sir.

Q And then while the affair was going on was there other shouts?

A Just yelling and shouting, sir.

Q Any other particular remarks that you recall?

A No, sir.

Questions by President:

Q Sergeant Farr was injured. Did you see Sergeant injured?

A No, sir, I did not.

Q Was he in the room in the five minutes between the two visits of the colored men?

A Yes, sir.

Q Was he injured at that time that you could see?

A Not to me knowledge, sir.

President: No further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q When you identified Private Willie Basden, and Private Roy Montgomery, did you identify them by their facial characteristics or by their names?

A Their facial characteristics.

Q Did you or not know their names when you first identified them?

A No, sir, I did not.

Q Now, something has been mentioned about photographs. I will ask you to look at these two photographs and tell me whether they were the two among the large number that you testified about?

A Yes, sir, they were.

Q This type of photograph. And about how many photographs were presented from which you selected these two?

A At least thirty, sir.

Q Could it be more than that?

A Yes, sir.

Q You don't know, but you are estimating as many as thirty?

A Yes, sir.

Trial Judge Advocate: Now, I want to offer these two in evidence.

Defense: I am objecting to their admission. They serve no purpose in this case that I can see.

Trial Judge Advocate: I am offering them for the limited purpose of letting the court see what photographs were presented to this witness, since the matter of photographs was gone into by counsel for the defense.

Law Member: Objection overruled.

The photograph of W. Basden was marked prosecution Exhibit 16, the photograph of R. Montgomery was marked prosecution Exhibit 17, and both exhibits were received in evidence.

Trial Judge Advocate: The prosecution has no further questions.

President: Does the defense have any further questions?

Defense: No further questions.

President: The witness will be excused.

There being no further questions, the witness was excused and withdrew.

Private Alvin Clarke, 650th Port Company, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name.

A Private Alvin Clarke.

Q And your grade?

A Private.

Q Your organization.

A 650th Port Company.

Q And your station?

A Fort Lawton.

Q How old are you, Private Clarke?

A 19, sir.

Q Do you remember the occasion on the night of August 14, 1944, when there was an incident in the Italian area involving some Negro soldiers?

A Yes, sir.

Q Do you know a Negro soldier by the name of William Montgomery?

A Yes, sir.

Q What company is he in?

A 650th Port Company, sir.

Q Is that the same company that you are in?
A Yes, sir.

Q Where did you see William Montgomery on the night of August 14, 1944?
A He was knocked out, sir.

Q Where was he lying, or was he lying?
A He was laying on the ground in front of barracks 719, sir.

Q In front of barracks 719?
A Yes, sir.

Q Was there any other Negro soldier or soldiers around him?
A Yes, sir.

Q Who did you recognize?
A Luther Larkin, sir.

Q Is that Corporal Luther Larkin?
A Yes, sir.

Q Well, what, if anything, was Corporal Luther Larkin doing?
A He was giving William Montgomery first aid, sir.

Q Did you watch him do that?
A Yes, sir.

Q Did or not Corporal Luther Larkin leave William Montgomery at any time while you were there watching them?
A Yes, sir.

Q All right. What did you see?
A Corporal Luther Larkin got up, sir, and went through the crowd.

Q About how many? You said a crowd. How many did you see or would you estimate were in that crowd?
A About thirty, sir.

Q All right. Did you or not see Corporal Luther Larkin do anything else?
A Yes, sir.

Q What did he do?
A A few minutes later, sir, I seen him come out into the company street and blow a whistle.

Q Corporal Luther Larkin blew the whistle?
A Yes, sir.

Q All right. And what, if anything, did you see happen after that?
A A group of men gathered around him, sir, and he told them to follow him.

Q He said to follow him?

A Yes, sir.

Q What kind of a whistle was that that Corporal Luther Larkin blew?

A I couldn't be sure, sir.

Q Describe its sound. By that I mean, was it like any other whistle that you had heard before; if so, what type?

A Yes, sir. It is just like the whistle they use in the company, sir.

Q Use in the company for what?

A For reville or fall out, sir.

Q Now, after Corporal Luther Larkin said, "Follow me," what happened, if anything?

A He led the group across the road and down into the Italian area.

Q Did you follow him?

A No, sir.

Q Now, I want you to turn around and just stand up and walk over here to the accused and point out Corporal Luther Larkin, will you?

A That's him, sir (pointing).

Q All right. Now, did you thereafter at any time go to the Italian area?

A Yes, sir.

Q By yourself or in a group?

A In a group, sir.

Q With reference to whether or not a second group went down to the Italian area after Corporal Luther Larkin led that first group, what are the facts? What are the facts as to that? Did a second group go down there after Corporal Luther Larkin led the first group?

A Yes, sir.

Q Was that the group then you say you were in?

A Yes, sir.

Q How many do you estimate were in the group that Corporal Luther Larkin led?

A About fifty, sir.

Q How many do you estimate were in the group that you went in?

A About 25, sir.

Q Could you tell who was leading the second group that you followed?

A No, sir.

Q Now, after you got down into the Italian area did you meet with any experience?

A Yes, sir.

Q What was that experience?

A I got a blow on the head, sir.

Q Do you know who hit you?

A No, sir.

Q Do you know whether it was an Italian or a Negro soldier that hit you?

A I can't be sure, sir.

Q Did you or not get an opportunity to see the person that struck you?

A No, sir.

Q What was this blow with; do you know what it was that struck you?

A A club, sir.

Q And where did you receive the blow?

A I started to go up the steps of the barracks in the Italian area and I was struck.

Q Where; on what part of the body did you receive the blow?

A On my head, sir.

Q Was it a light blow or a severe blow -- was it a light or a strong blow?

A It was pretty strong, sir.

Q Will you point to the court where on your head you received the blow?

A Right here, sir (indicating).

Q Did you fall to the ground?

A Yes, sir.

Q Did anyone pick you up?

A Yes, sir.

Q Who picked you up?

A Riley Buckner, sir.

Q Will you step over there and see if you find Riley Buckner among the accused, please?

A Yes, sir. This is Riley Buckner, sir (pointing to one of the accused).

Q Point again. I don't know if all the court saw that or not.

A (Witness again points to one of the accused).

Q Now, are you acquainted with the buildings in the Italian area?

A No, sir.

Q Step up here to this map and let me ask you this. Were you ever in the Italian area other than the night you were struck?

A No, sir.

Q That was your only time?

A Yes, sir.

Q Well, what barracks were you in?

A 719, sir.

Q 719. That is identified on Prosecution Exhibit No. 2 as being barracks 719, and this building, 700, is the 578th mess hall. This 708 has been identified as an Italian barracks; 709 has been identified as an Italian barracks, and 713 has been identified as an orderly room; 712 as a latrine. Do you know which one of those buildings you were at when you received this blow?

A I am not sure, sir.

Q You are not sure which one of them it was. All right. Well, who did you see in the Italian area, if anyone, prior to the time that you received this blow and were taken away by the accused Riley Buckner as you have testified?

Defense: That is objected to, if the Court please, in the absence of some preliminary showing this man had a chance to observe. As I understand his testimony so far, he went down to the area, entered a building and was rapped on the head.

Trial Judge Advocate: I asked him if he saw anyone.

Law Member: That's right. There was a question in the testimony.

Defense: He didn't ask that, if the Court please; he just asked who did you see. There is no testimony he saw anybody yet.

Q Private Clarke, did you see anyone in the Italian area prior to the time that you received this blow?

A Yes, sir.

Q Who did you see?

A Henry Jupiter, sir.

Q Now what, if anything, was Henry Jupiter doing when you saw him?

A He was standing up with a club, sir.

Q Standing up with a club. What do you mean, standing up with a club?

A Standing there, sir.

Q And where did he have a club?

A In his hand, sir.

Q He had it in his hand. All right. Now, step over here with me and let's see if you find Henry Jupiter among the accused; if so, point him out.

A This is Henry Jupiter, sir (pointing to one of the accused).

Q This is Henry Jupiter?

A Yes, sir.

Q Now, just a minute. Did you see anyone else in the Italian area prior to the time that you were struck?

A Nelson Alston, sir.

Q Well, I would like to have you look over here and see if you see the accused Nelson Alston in these soldiers?

A That is him there, sir (pointing to one of the accused).

Q That is the accused Nelson Alston?

A Yes, sir.

Q And what did you see him doing, if anything?

A He was standing up with a club too.

Q Now, did you see whether or not he was making use of that club?

A No, sir.

Q Now, do you know the accused Booker Townsell?

A Yes, sir.

Q Well, let's point him out.

A That is Booker Townsell, sir (pointing to one of the accused).

Q Let's see. That is the fourth man?

A Fourth man, sir.

Q The fourth man in the second row. Did you at any time subsequent to the incident there in the Italian area hear the accused Booker Townsell make any statement as to whether or not he was down in the area?

A Yes, sir.

Q What did he say?

A He said he got the first Italian that was hit, sir.

Q He said he got the first Italian that was hit. Now, do you know the accused Johnnie Ceaser?

A Yes, sir.

Q Let's go over here and see if you can identify the accused Johnnie Ceaser?

A That is Johnnie Ceaser there, sir (pointing to one of the accused).

Q This soldier here?

A Yes, sir.

Q Let's see. Can the court see that. Would the court care for these men to rise. Well, after this incident occurred that you have told the court about did you hear Corporal Johnnie Ceaser make any statement?

A Yes, sir.

Q What was that?

A He said, "We gave the Italians a good whipping".

Q Do you know the accused Samuel Snow?

A Yes, sir.

Q Let's see if you can pick out Private Samuel Snow?

A That's him back there, sir (pointing to one of the accused).

Q Come around over here. Which one is Samuel Snow?

A The one right there (pointing).

Q Tell me the one from the end?

A The seventh man, sir.

Q Is this the man you said he was?

A That's the man.

Q That is Samuel Snow?

A Yes, sir.

Q You are positive that is Samuel Snow?

A Yes, sir.

Trial Judge Advocate: I am going to ask the court, in view of the motions of the man that was pointed out, I am going to ask the court as I did the other day for him to identify himself.

Law Member: I didn't notice anything.

Trial Judge Advocate: I don't know whether you could see from where you were or not, but he was pointing to another man as being Samuel Snow, -- the man that was pointed to was pointing to someone else.

Law Member: Was it the seventh man in the second row who was identified as Snow?

Trial Judge Advocate: Yes, it was the seventh man.

Law Member: Will you stand up, please? Are you Samuel Snow?

The individual indicated then arose, and answered: Yes, sir.

Q Now, did you see Samuel Snow in the Italian area that night?

A Yes, sir.

Q Where did you see Samuel Snow?

A He was knocked out, laying on the ground, sir.

Q Knocked out, laying on the ground. Did you see it as he was knocked out or did you just see him lying on the ground?

A He was just laying on the ground, sir.

Q Now, this particular night when you went down to that area, do you remember whether or not it was raining or was it a clear night?

A It wasn't raining, sir.

Q Have you been promised anything for testifying?

A No, sir.

Q In this matter?

A No, sir.

Q Made any promises by anyone?

A No, sir.

Trial Judge Advocate: The prosecution has no further questions, if it please the court.

CROSS-EXAMINATION

Questions by defense:

Q You may not have been promised anything but you are hoping to get immunity, aren't you?

A No, sir.

Q You are not hoping to get immunity, is that right?

A No, sir.

Q You don't want to go free in this case?

A Yes, sir.

Trial Judge Advocate: He is not under charges.

Defense: It is quite evident he isn't under charges.

Trial Judge Advocate: I think the question is improper until charges have been filed, asking him if he is going free in this case.

Q Well, you don't want to be charged with this offense either, do you, Clarke?

A No, sir.

Q Have you discussed the testimony you were going to give here today with anyone?

A No, sir.

Q Now, what time did you eat supper on the evening of August 14?

A I can't remember, sir.

Q You can't remember what time you had supper on the evening of August 14th?

A No, sir.

Q You remember all the other details of this evening very accurately but you can't remember what time you had supper, is that right?

A Yes, sir.

Q You ate supper that night, didn't you?

A Yes, sir.

Q And you ate at the regular mess hall?

A Yes, sir.

Q Who sat next to you on your left at supper?

A I don't know, sir.

Q Who sat on your right?

A I don't know, sir.

Q Who sat across from you?

A I don't know, sir.

Q After you got through eating your supper where did you go?

A I went to the bus stop, sir.

Q To the bus stop. About what time were you at the bus stop?

A I am not sure about that, sir.

Q Well, about what time was it?

A About 7:00, sir.

Q About 7:00?

A Yes, sir.

Q And what did you do up at the bus stop?

A I waited for my girl to come from town, sir.

Q Waited alone for her?

A No, sir.

Q Who else was with you?

A Jefferson D. Green, sir.

Q Did your girl come from town?

A No, sir.

Q Then what did you do?

A I went up to the hospital, sir, and made a phone call into Seattle.

Q Green with you?

A Yes, sir.

Q Stay with you?

A No, sir.

Q What happened?

A He left, sir.

Q You stayed at the hospital?

A Yes, sir.

Q

Q What time was that?

A I am not sure, sir.

Q About what time?

A About 10:00, sir.

Q About 10:00. And you finally left the hospital?

A Yes, sir.

Q Where did you go?

A Back to my barracks, sir.

Q Direct to your barracks?

A Yes, sir.

Q You weren't in the PX that evening?

A I can't remember, sir.

Q Weren't you in the PX that evening drinking beer?

A I can't remember, sir.

Q You say you weren't in the PX that evening drinking beer?

A I say I can't remember.

Q You can't remember?

A That's right, sir.

Q You know you weren't in the PX drinking beer from the time you left the hospital up until the time this fight occurred, is that right?

A Yes, sir.

Q Were you over at the party that was being given in the 578th mess hall that evening?

A No, sir.

Q Were you down in the day room?

A No, sir.

Q The Service Club?

A No, sir.

Q Well, approximately what time was it you got back up to your barracks?

A About 10:30, sir. \

Q About 10:30. Did you go into your barracks?

A Yes, sir.

Q What did you do?

A I went upstairs and took my pack off the bed and started fixing it for the next morning.

Q How long did you remain doing that?

A I am not sure about that, sir.

Q Well, about how long?

A About 15 minutes.

Q About 15 minutes. Is that when you left to go outside?

A Yes, sir.

Q What prompted you to go out of the building?

A Russel Ellis came in, sir, and said that the Italians had knocked out one of our boys outside.

Q And that is when you went out of the building?

A Yes, sir.

Q You saw Montgomery on the ground?

A Yes, sir.

Q Did you think he was dead?

A What was that, sir?

Q Did you think he was dead?

A I didn't know, sir.

Q There was a lot of people around there talking about him being dead, weren't there?

A No, sir.

Q You didn't hear any talk at all about his being dead?

A No, sir.

Q Well, he was lying prone, not moving, is that correct?

A That's right, sir.

Q Now, at the time you went out of the barracks, did you go out with anyone?

A No, sir.

Q You went out alone?

A Well, the rest of the barracks, sir, was going out too at the same time.

Q Who went down the stairs ahead of you?

A I don't know, sir.

Q You don't know who went down ahead of you?

A That's right, sir.

Q Do you know who went behind you?

A No, sir.

Q Who was left in the barracks when you went out?

A I don't know, sir.

Q You don't know. Now, when you got out in front, in front of your barracks -- that is barracks 719, isn't it?

A That's right, sir.

Q By the way, you live upstairs or downstairs?

A Upstairs.

Q Did you see a crap game going on up there that evening?

A I can't remember, sir.

Q You can't remember. You weren't shooting craps yourself?

A No, sir. I don't gamble.

Q You are from Texas, aren't you?

A No, sir.

Q Where is your home?

A Michigan, sir.

Q Were you born in Texas?

A No, sir.

Q Born in Michigan?

A That's right, sir.

Q Detroit?

A No, sir,

Q Whereabouts?

A South Haven, sir.

Q Have you ever been convicted of a crime?

A No, sir.

Q None at all?

A No, sir.

Q You are sure of that?

A Yes, sir.

Q You realize you are under oath?

A Yes, sir.

Q Now, when you got out in front of barracks 719, how many people did you see around out there?

A I can't say for sure how many, sir.

Q Well, how many do you think you saw? 50, 100?
A About 50, sir.

Q About 50?
A Yes, sir.

Q Could have been more than that?
A Could have been, sir.

Q You mean that is about 50 people or more that you saw around Montgomery?
A About 40 around Montgomery, sir.

Q About 40 around Montgomery. Where were the other 10 or more?
A Oh, standing in front of the barracks, sir.

Q Do you think that around Montgomery there was about 40 or more than 40?
A I couldn't say for sure, sir.

Q Well, you said a moment ago in response to a question from Colonel Jaworski there were 30. What has caused you to change your mind to 40 now?
A When I made the statement I wasn't too sure about it.

Q You weren't sure?
A Still not too sure, sir.

Q Now who did you see standing around Montgomery there when he was laying on the ground?
A I can't remember, sir.

Q You can't remember who you saw standing around Montgomery?
A That's right, sir.

Q Plenty of light around there, isn't there?
A Yes, sir.

Q Street lights in that vicinity?
A I am not sure, sir.

Q What is your best recollection? Street lights around there or not?
A I couldn't say, sir.

Q Right in front of barracks 719 it is well lighted, isn't it?
A The lights from the barracks, sir.

Q Wasn't any difficulty about seeing?
A That's right, sir.

Q And there was a group of men around there?
A That's right.

Q And you can't remember a single one that you saw?
A The only one I recognized was Montgomery and Larkin.

Q Aside from Montgomery and Larkin you can't remember a single other individual?
A That's right, sir.

Q Who were some of the other ten or more people standing over directly in front of the barracks? Can you identify any of those?
A No, sir.

Q Well, how long did you stand out in front of 719?
A About ten or fifteen minutes, sir.

Q Did the crowd continue to grow?
A Yes, sir.

Q Well, how many people were out in front of there just before you went down to the Italian area?
A I couldn't be too sure, sir.

Q Well, what is your best estimate of it?
A Pretty close to a hundred, sir.

Q About a hundred. How many colored soldiers are there down in that area?
A I don't know, sir.

Q Do you know how many soldiers in your company?
A No, sir.

Q You don't know that?
A That's right, sir.

Q How long have you been in the Army?
A Since February 2, sir.

Q February 2nd?
A Yes, sir.

Q And you have been attached to the 650th ever since you arrived here at Fort Lawton?
A That's right, sir.

Q And you never did take the trouble to find out how many men were in your company?
A Yes, sir.

Q You say a group went down to the Italian area before you did, is that correct?
A That's right, sir.

Q How many men in that group?
A I couldn't say for sure, sir.

Q You couldn't say for sure?
A That's right, sir.

Q Well, how many do you think were in that group?

A About fifty, sir.

Q Do you know any men that were in that group?

A No, sir, only the man that led it, sir.

Q The man that led it. This group that went down there, did they run down or walk down or how did they go down?

A Hurried down there, sir.

Q What do you mean by hurried?

A Sort of walked fast, sir.

Q Walked fast?

A Yes, sir.

Q And what route did they follow?

A They went along the road, sir.

Q Followed the road down?

A That's right, sir.

Q And what did that group do from the time that you first came out there and saw Montgomery lying on the ground up until the time they started down towards the Italian area?

A I don't know what they done, sir, after they went across into the road, sir.

Q All right. You tell me what they did before they went down to the road then.

A Just got in a group, sir.

Q Just got in a group?

A That's right, sir.

Q And that is the only thing they did?

A That's right, sir.

Q All right. You went down with the second group?

A That's right, sir.

Q You were one of the first men out there and waited for the second group?

A That's right, sir.

Q You don't know the leader of that group?

A No, sir.

Q As a matter of fact you were the leader, weren't you, Clarke?

A No, sir.

Q You weren't the leader of that second group that went down there?

A No, sir.

Q You may think this is a laughing matter, Clarke, but I don't think so.

Trial Judge Advocate: If it please the court, it isn't up to the defense counsel to lecture the witness. I ask those remarks be stricken.

Defense: I think this is one of the most serious of occasions here to this witness. It is not one for levity.

Law Member: I don't believe the witness has indicated anything of that kind. He smiled when you asked him the question if he was the leader of the second group. Let's get on with the questioning.

Q Were you armed when you went down there?

A No, sir.

Q You went down without any kind of a weapon?

A That's right, sir.

Q What were you going down for; just to observe and see what was going on?

A That's right.

Q You didn't intend to go down with the intention of doing any damage or doing anyone any bodily injury?

A That's right.

Q Just went down to observe?

A That's right, sir.

Q Well, were there quite a number of other colored soldiers who were down there without weapons of any kind, or were you the only one in the whole crowd that didn't have one? Which was the situation?

A Some of them didn't have weapons, sir.

Q Well, tell us who went down there and didn't have any weapons?

A I don't know, sir.

Q You were there with that group, went down with them, and can't tell us the name of a single individual?

A That's right, sir.

Q Now, how many were there in your group that went down there?

A I couldn't be sure, sir.

Q Well, approximately how many were there?

A About forty, sir.

Q About forty?

A Yes, sir.

Q You told Colonel Jaworski a moment ago there was twenty-five. Which was correct?

A I made a statement before that I wasn't sure and I am not sure now, sir.

Q As a matter of fact, you just say the first thing that comes to your mind when I ask you these questions, regardless of the truth or veracity of it, don't you, Clarke?

A No, sir.

Q Well, you went down to the Italian area then. Did you follow down the road too?

A Yes, sir.

Q Come over here by the map, will you, Clarke?

A Yes, sir.

Q Where did you enter the Italian area? Indicate to us on the map. Can you indicate to the court on prosecution exhibit 2 approximately where you and your group entered the area?

A We came down alongside the mess hall, sir.

Q Alongside the mess hall?

A Yes, sir.

Q Building 700?

A Yes, sir.

Q You didn't go down the road then?

A The road is next to the mess hall, sir.

Q Was that Lawton Road you are talking about?

A Yes sir; on the left hand side.

Q Did you go down the road or out across a path?

A Down the road, sir.

Q Right down the road?

A Yes, sir.

Q As you come by the mess hall, building 700, did you see any lights in it or not?

A I can't remember, sir.

Q All right. You came on down Lawton Road past building 700. Now, where did you enter the Italian area?

A What do you mean by that question, sir?

Q Well, let's call this area where buildings 708, 709, 713, 712, 710, 711, 714, and 715, within Wyoming Avenue and Lawton Road -- all that area -- that is what is known as the Italian area here.

A Yes, sir.

Q Now, tell us whereabouts you entered that area. Stand over here and use this pointer, Clarke. Show the court so they can see the map.

A You want to know where I entered?

Q That is what I want to know, Clarke, where you entered.
A All I can say is I followed the road down.

Q You followed the road?
A That's right.

Q But at some place you had to leave the road and go into the area?
A Yes, sir.

Q Now, where is that place you left the road and entered the area?
A It was up in here, sir, someplace (indicating).

Q You think it was between buildings number 709 and 713?
A That's right, sir.

Q Is that where your whole group entered it?
A No, sir.

Q Well, where did your group enter it?
A Part of them drifted off, sir.

Q Where did they drift off?
A In between the barracks.

Q They drifted off between barracks 708 and 709, is that right?
A I guess so. I can't be sure those were the barracks.

Q Well, after you came to the Italian area there are only two barracks there, aren't there?
A Yes, sir.

Q But you yourself went on around and entered the area between 709 and 713, is that correct?
A Yes, sir, I think that is where I entered.

Q Who else was with you when you left the rest of the crowd and went on and entered the area between 709 and 713?
A I can't remember, sir.

Q You can't remember. All right. After you got into the area between 709 and 713 where did you go?
A I just followed the crowd.

Q All right, where did the crowd go?
A They went around the barracks, sir.

Q Around to which barracks?
A One of the barracks there, sir.

Q Will you tell us which one? You were down there.
A I can't be sure, sir, which one.

Q Well, you give us your best recollection then of which one it was.

A I couldn't do that, sir, unless I was sure.

Q You know where the orderly room is here, don't you, 713?
This orderly room (indicating).

A I don't know it is the orderly room, sir.

Q You take my word for it, Clarke, that it is the orderly room.

A Yes, sir.

Q Now tell us whereabouts you went after entering that area between the orderly room and the barracks?

A I started going in that building, sir.

Q You started going into building 713?

A I think that was the building.

Q Into the orderly room?

A I think that was the building, sir.

Q Did you attempt to go in through the side door or the front door?

A The front door, sir.

Q Through the front door?

A I think that is it, sir.

Q Now, what was the condition down here as to light between 713 and 709? Was it pretty dark or was there plenty of light there?

A It wasn't too light, sir.

Q It wasn't too light?

A That's right.

Q Was it too dark for you to see anyone -- was it that dark?

A No, sir.

Q It wasn't that dark?

A No, sir.

Q All right. Now you tell us who you recognized before you got to the door of 713 when you were struck?

A You mean tell the names of the men that I recognized in the area?

Q Yes. I want to know the names of the men that came in with you from the road between 713 and 709 as you were going to the orderly room and prior to the time that you were struck.

A I don't know their names, sir.

Q You don't know their names?

A Not the group I was with, sir.

Q All strangers to you, were they?

A I couldn't recognize them, sir.

Q Was there light in the barracks next to the orderly room there that night?

A I can't remember, sir.

Q You can't remember. Now, as a matter of fact, you actually got into the orderly room there, didn't you?

A No, sir.

Q And weren't you running out of the orderly room at the time you were struck and fell to the ground?

A No, sir.

Q You weren't. Any witnesses that testified to that effect here are clearly mistaken, are they?

A Yes, sir.

Q All right. Now at the time that you were struck were you actually on the stoop in front of building 713, the orderly room, or had you yet reached the stoop?

A I had started up it, sir.

Q And you were struck from the rear or in front?

A I can't remember, sir. I had my head down.

Q You mean you were bent forward?

A That's right, sir.

Q And you were struck. Were you unconscious?

A No, sir.

Q You never lost consciousness?

A That's right, sir.

Q And where did you go?

A I fell, sir.

Q On the steps of the stoop?

A I fell off the steps.

Q You fell off the steps?

A Yes, sir.

Q Were you able to get up from there?

A No, sir. Riley Buckner picked me up and took me out.

Q That is where you were picked up?

A That's right, sir.

Q And where did Riley Buckner take you to?

A He took me up onto the street, sir.

Q Up onto the street. Well, suppose you indicate whereabouts up there on the street he took you?

A Took me over to my barracks.

Q Over to your barracks. When was it that you recognized

these individuals you have described here. Was it while Buckner was carrying you up there?

A No, sir.

Q When was it? Before that; before you were knocked out?

A That's right, sir.

Q Now where was it you saw Jupiter there that evening?

A I can't be sure, sir. I can't remember.

Q You can't remember where you saw Jupiter?

A That's right. He was in the area someplace.

Q He was in the area but you can't recall where?

A That's right.

Q You don't know whether he was up around barracks 708 or whether he was around barracks 711 there, is that right?

A That's right, sir.

Q You haven't any idea where he was?

A That's right, sir.

Q All right. Well, where did you see Alston?

A I can't remember where I seen him.

Q You can't remember where you saw him either. You don't know whereabouts in all this area you saw him?

A That's right, sir.

Q And where was it you saw Snow?

A He was along the road, sir.

Q Snow was along the road?

A That's right, sir.

Q Whereabouts along the road here?

A Just as you go out from the pavement, sir.

Law Member: Go out from where?

A Just as you go off the pavement.

Q Where do you go off the pavement? I am not familiar with that.

A I think it is right here, sir. (indicating)

Q That is up in the vicinity of your own barracks?

A That's right.

Q By 719?

A That's right.

Q You never did see Snow in the area then, is that right?

A That's right.

Q Well, sit down here a minute, Clarke.

A Yes, sir.

Q This club you saw Jupiter with, how long a club was that?

A Oh, about this long (indicating).

Q About how long is that? How long in feet do you think it is?

A About three feet.

Q About three feet long?

A Something like that, sir.

Q Was it a white club, or a green club or a black club, or what was it?

A I can't remember, sir.

Q You can't remember what color it was?

A That's right.

Q Was it a round club, was it a square club or rectangular, or what was it like?

A It was square, sir.

Q It was square?

A That's right, sir.

Q And what do you think the approximate dimensions of it were?

A I can't be sure, sir.

Q All right. The club that you saw Alston with --

A Yes, sir.

Q -- (continuing) how long a club was it?

A It was about the same length, sir.

Q Well, how long is that?

A About three feet, sir.

Q About three feet. Then was it a white club, a green club or a black club?

A I can't remember, sir.

Q You can't remember?

A Yes, sir.

Q And what were the approximate dimensions of that club? Was it a square club, a round club or rectangular club, or what?

A Square, sir.

Q And what were its approximate dimensions?

A I couldn't be sure, sir.

Defense: Oh, I don't think I have any further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q In answer to Major Beek's question at one time you said Russel Ellis came running upstairs and made what remark?

A The Italians had beat up on one of our boys outside, sir/

Q He came running upstairs and announced that?

A That's right, sir.

Q Now, will you -- have you told the court everything he said?

A Yes, sir.

Q All right. Now, will you step over here with me and point out Russel Ellis?

A Yes, sir. The second man in the back row, sir.

Q The second man in the back row wearing dark glasses?

A That's right, sir. This one, sir (indicating one of the accused).

Q Now, Major Beeks asked you about where you saw the accused Henry Jupiter and the accused Nelson Alston, and you said you couldn't be sure. Now, I want you to give the court the benefit of as much information as you can as to the approximate place where you saw them. Now, by that, I mean this. Let's take the accused Nelson Alston first. Can you be sure whether or not he was beyond the mess hall, building 700, when you saw him?

Defense: If the court please, I am objecting to this as being improper redirect. This witness has very clearly stated that he couldn't remember any places in that entire area, the Italian area, where he saw him.

Law Member; He also testified on direct examination from looking at that map he doesn't know himself where he was.

Defense: I also brought out clearly where he was. I gave him all the latitude in the world.

Law Member: Just a minute, Major. On direct examination, in answer to a direct question by the Trial Judge Advocate, this witness stated that from that map he couldn't tell the building that he was attempting to get in.

Defense: He did later identify it.

Law Member: No, with your leading question he answered that was the orderly room, 713. He couldn't remember. But I remember very distinctly that this witness stated that he didn't know from that map what building he was entering or attempting to enter.

Defense: I renew my objection nevertheless.

Law Member: May I have the question, please.

(Question read by reporter).

Law Member: Objection overruled.

Q Will you answer that? Can you be sure whether or not he was beyond the mess hall, 700, when you saw him?

A Yes, sir.

Q Can you be sure whether or not --

Defense: If the Court please, I am going to further object. These questions are leading and suggestive. The answer he is trying to get, there isn't any question about it. In objecting to them, I suggest the court require Counsel to describe to the Witness thoroughly the area and ask him if he wants to locate where he saw them. This type of questioning is certainly leading and suggestive.

Law Member: For the record, what was that last question? Was it completed?

(Previous question and answer read by reporter.)

Defense: I move to strike the answer.

Trial Judge Advocate: That objection was overruled.

Law Member; Now he wants the answer stricken. Will you give me that, please?

(Question and answer again read by reporter.)

Defense: I move the answer to that question be stricken.

Law Member: At the time you previously objected you didn't object on the grounds it was leading, did you?

Defense: I don't remember, but if I didn't, I am asking the court to strike the answer now as being leading.

Law Member: I will strike the question and answer, and reframe your question, Colonel.

Trial Judge Advocate: All right.

Q Now, if you will, Private Clarke, please tell the court up to what point on this map you can be sure that the accused Henry Jupiter had gone when you saw him with a stick in his hand. Now let me explain to you in connection with this question. Here are your barracks, 719; here is Lawton Road, and here is the mess hall of the 578th Company, Port Company. It is marked 700.

A Yes, sir.

Q Lawton Road runs up this way. Here is an Italian barracks (indicating), and here is an Italian barracks, 708 and 709, and a third building down the street here is the orderly room. The building over here, 712 is a latrine (indicating). Now, are you in a position to tell the court up to what point the accused Nelson Alston was when you saw him with a stick in his hand?

A He was farther than the mess hall. That is all I can say.

Q All you can say is he was farther than the mess hall?

A That's right, sir.

Q I will ask you the same question with respect to the accused Henry Jupiter. What is the best information you can give the court as to how far in that area he was when you saw him?

A He was farther than the mess hall too, sir.

Q Farther than the mess hall?

A That's right, sir.

Q And that is your best knowledge of the matter and that is as much as you can be positive of?

A That's right, sir.

Q And may I gather from that that you are positive of the fact that both of them --

Defense: I object to the form of the question. You can see what is coming here very clearly.

Trial Judge Advocate: All right. I certainly am trying to find out whether he is positive about it and I didn't assume there was any objection to it, but if there is I will reframe it.

Law Member: Reframe the question, and please, Major, allow the question to be completed before you object.

Defense: I am sorry, if the court please.

Law Member: Reframe your question.

Q Are you or not positive of the fact that both of these accused had entered the Italian area at least beyond the mess hall?

A Yes, sir, I am positive of that, sir.

Q All right.

Defense: I move to strike the answer, if the court please. The question is leading and suggestive of the answer that he wanted.

Law Member: Overruled. Your motion is denied.

Trial Judge Advocate: The Prosecution has no further questions.

RECROSS-EXAMINATION

Questions by Defense:

Q In your answer to the last question you told Colonel Jaworski the men were in the Italian area. Whereabouts in the Italian area did you see them?

A I can't be sure.

Q You can't even be sure they were in the Italian area, can you; all you know is you saw them beyond the mess hall, is that right?

A That's right, sir.

Q And you are not sure you saw them actually down in the Italian area, are you?

A That's right, sir.

Defense: That is all.

Trial Judge Advocate: Prosecution has no further questions, if it please the court.

President: Any questions by the court?

Trial Judge Advocate: May I withdraw that. I just want to ask one question.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Do you or not know what is known as the Italian area? Do you know what it consists of?

A Yes, sir.

Q What does it consist of?

A Black barracks.

Q Do you know how many barracks?

A No, sir.

Q Do you know where the Italian area begins and where it ends; do you know of your own knowledge where the boundaries are of what is known as the Italian area?

Defense: On cross-examination, and for the purpose of questioning this witness, I described to him specifically what we call the Italian area here. I named each building that was in it and described the road bounding it. He said he understood.

Trial Judge Advocate: If it please the court, there isn't no such thing.

Defense: I asked the question.

Trial Judge Advocate: Your saying something is the Italian area doesn't make it so.

Defense: It made it so for the purpose of my cross-examination. That is all I am referring to.

Trial Judge Advocate: If it please the court, I am merely asking to have this witness testify whether he has any knowledge of what is known as the Italian area.

Law Member: (To witness) Answer that yes or no.

The Witness: Yes, sir.

Q Yes, sir, what?

Law Member: He has knowledge of what constitutes the Italian area.

Q All right. Give us the boundaries of the Italian area.

A As far as I know, sir, it is across the paved street in front of 719.

Q As far as you know it is across the street in front of 719?

A That's right, sir.

Q All right.

Defense: If the Court please, I am further objecting to this line of testimony. Counsel is trying to impeach the testimony of his own witness.

Law Member: Objection overruled.

Q Point out from here. You say across the street from 719. Point out then what you mean by the Italian area. You stand over here so the Court might see.

A Across here, sir (indicating).

Q Across from 719?

A That's right, sir.

Q And a part of this mess hall (indicating), you call that the Italian area too?

A Yes, sir.

Trial Judge Advocate: All right. That is all the prosecution has. No further questions.

Law Member: For my information, whose mess hall is 700?

Trial Judge Advocate: It was the 578th Port Company. May we stipulate that?

Defense: I think so.

Law Member: What is the 578th Port Company?

Trial Judge Advocate: It is another Port Company that was down there. We had three of them, the 650th, the 651st and the 578th, and this was the mess hall of the 578th.

Major Carpenter: It is not an Italian unit?

Trial Judge Advocate: No, sir, it is Negro soldiers.

President: That is stipulated?

Defense: On the 578th?

President: The statement just made.

Defense: Oh, yes, that statement is correct. I will so stipulate.

President: Any questions by members of the Court?

EXAMINATION BY THE COURT

Questions by Major Crocker:

Q Clarke, the building that you were just about to enter when you were struck, was there any fighting going on inside at that time?

A There was some noise, sir.

Q What were you going in for?

A I was going in to see what was going on, sir.

Q That was your own purpose?

A That's right, sir.

Major Crocker: No further questions.

Questions by Law Member:

Q When this group which you say was led by Corporal Larkin left the neighborhood of barracks 719, did yiu notice whether or not they were armed?

A Some of them had clubs, sir.

Q Some of them had clubs?

A That's right.

Law Member: That is all.

Questions by Major Carpenter:

Q In this building you attempted to go in was there any identification on the front of it, such as a number or name?

A I never noticed, sir.

Major Carpenter: That is all.

President: Any further questions? If not, the Witness will be excused.

There being no further questions, the Witness was excused and withdrew.

President: The court will now recess until 3:15 p.m.

The court thereupon recessed at 3:00 p.m. and reconvened at 3:15 p.m., 21 November 1944.

President: Is the Prosecution ready?

Trial Judge Advocate: Ready, sir.

President: Is the Defense ready?

Defense: Yes, sir.

President: The court will come to order.

Trial Judge Advocate: Let the record show the accused, members of the court, and the personnel representing the defense and the personnel representing the prosecution are all present.

The reporter was also present.

Trial Judge Advocate: If it please the court I next offer in evidence a grant of immunity to the Witness Alvin E. Clarke who just testified. Is it admitted, sir?

Law Member: It is admitted as Prosecution Exhibit 18.

A letter granting immunity to Alvin E. Clarke was then marked Prosecution Exhibit 18 and received in evidence. The Trial Judge Advocate then read Prosecution Exhibit 18 to the court.

Private Jesse C. B. Sims, 650th Port Company, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your full name.

A Private Jesse C. B. Sims.

Q You say Private Jesse C. B. Sims?

A Yes.

Q S-i-m-s?

A Yes, sir.

Q Your organization.

A 650th Port Company, sir.

Q And your station.

A Fort Lawton, sir.

Q Now, Private Sims, you will have to raise your voice and speak out loud so that the members of the court before you there can understand everything you say.

A Yes, sir.

Q Do you recall the incident that took place at Fort Lawton on or about August 14, 1944?

A Yes, sir.

Q In what barracks did you live on that date?

A 719, sir.

Q 719. Upstairs?

A No, sir.

Q Downstairs?

A Yes, sir.

Q Do you know a Negro soldier by the name of William Montgomery?

A Yes, sir.

Q Did you see him that night?

A Yes, sir.

Q Where did you see him?

A Standing in front of the orderly room in the Italian area.

Q I am speaking of William Montgomery, Willie Montgomery; not Roy Montgomery?

A No, sir, I didn't see him.

Q You didn't see William Montgomery in the orderly room?

A No, sir.

Q Who did you have reference to when you said standing in front of the orderly room?

A Roy Montgomery.

Q I will ask you to see if you can identify Roy Montgomery later.

A Yes, sir.

Q Let's get back now to your barracks 719. What was the first thing that came to your attention on the night of August 14th that was of an unusual nature?

A That was, sir, William G. Jones.

Q William G. Jones?

A Yes.

Q What was it that involved William G. Jones that caused you to believe something of an unusual nature was taking place?

A He came upstairs, sir, and told us -- he said that some of the boys --

Law Member: You can talk louder than that. Make believe you are yelling signals or something. Talk up.

A He said, "The Italians have knocked one of your boys out out there." He said, "You Texas boys always talking about what you will do". He say, "All right, now let's go".

Q Who said that?

A William G. Jones.

Q You say he came upstairs?

A Yes, sir.

Q Upstairs in what barracks?

A 719.

Q What were you doing upstairs at that time?

A Shooting craps, sir.

Q Shooting craps, Who else do you remember was in the crap game with you?

A Richard Sutliff, Henry Jupiter, A. G. George.

Q A. G. George?

A A. G. George.

Q President: Sutliff?

The Witness; Yes, sir.

Q Jupiter was the second one you named?

A Yes.

Q And A. G. George was the third one you named?

A Yes, sir.

Q Anyone else?

A Willie Scott; Henry Jupiter.

Q All right. After William G. Jones made that statement, what, if anything, was done?

A Yes, sir.

Q What?

A I came downstairs and William G. Jones and about four men was going on down into the Italian area.

Q All right. Now at this point I want you to come with me,

Private Sims, and look over these accused and see if you see William G Jones among their number.

A Yes, sir.

Q You do. Well, come over here and point your finger at him.

A (Witness points to one of the accused.)

Q That is William G. Jones?

A Yes, sir.

Q Did you go along with the accused William G Jones?

A No, sir.

Q Where were you standing when he walked down with these four or five men?

A I was standing just outside of the door to the left of the barracks.

Q Of what barracks?

A 719.

Q Did you or not hear a whistle blown?

A Yes, sir.

Q Did you or not see who blew the whistle?

A Yes, sir, I seen who blew the whistle.

Q What kind of a whistle was it?

A Sir, I couldn't exactly tell you because I wouldn't be positive of what kind of whistle it was.

Q Had you heard whistles of that kind blown before?

A No, sir, not at night.

Q I don't mean that night. I mean had you ever heard whistles of that kind blown before?

A Yes, sir.

Q In connection with what?

A Fall-out and formation.

Q Fall-out and formation?

A Yes, sir.

Q Did you see who blew that whistle?

A Yes, sir.

Q Who blew it?

A Luther Larkin.

Q Luther Larkin. Come with me now, Private Sims, and see if you can point out among the accused here Luther Larkin?

A This one here (indicating one of the accused).

Q That is Luther Larkin?

A Yes, sir.

Q Did Corporal Luther Larkin or not make any statement at that time?

A No, sir, not at that time.

Q Not at that time?

A No, sir.

Q What, if anything, did you see Corporal Luther Larkin do after the whistle was blown by him?

A Take a group of men and go on down into the Italian area.

Q He took a group of men down to the Italian area?

A Yes, sir.

Q How many would you estimate were in his group?

A Sir, I would say about twenty.

Q All right. Did you go with that group?

A No, sir.

Q Did you thereafter go to the Italian area?

A Yes, sir.

Q Now, did you go by yourself or did you go in a group?

A I went in a group, sir.

Q Did anyone lead that group?

A Yes, sir.

Q Who?

A Arthur Hurks.

Q Sergeant Arthur Hurks?

A Yes, sir.

Q All right. Come with me and let's see if you can identify Sergeant Arthur Hurks. Do you see him among the accused?

A Yes, sir. (Witness points to one of the accused.)

Q The second man from the front row?

A Yes, sir.

Q All right. Did Sergeant Arthur Hurks, the accused, make any statement at the time that he led this group of men?

A Sir, he said, "All right, men, let's go."

Q He said, "All right, men, let's go"?

A Yes, sir.

Q Is that or not the group that you went with?

A That was the group I went with, sir.

Q All right. Now, as that group started down to the Italian

A area were any weapons or any instruments taken along?
A Yes, sir.

Q What?

A Sticks.

Q Where were they obtained?

A There was a little fence, sir, right out in front of the 578th mess hall.

Q A little fence in front of the 578th mess hall?

A Yes, sir.

Q And what happened with that fence, if anything?

A Sir, it was torn down.

Q The fence was torn down?

A Yes, sir.

Q And what was done with the parts of the fence that were torn down?

A It was taken on down into the Italian area, sir.

Q Have you ever seen sticks of this kind before (pointing)?

A Yes, sir.

Q I am pointing to Prosecution Exhibit 9. Where did you see sticks of this kind before?

A In that little fence.

Q Is that or not the type of stick that was in the fence that you testified to the court was torn down?

A Yes, sir. That and 1 x 4's.

Q That and 1 x 4's?

A Yes, sir.

Law Member: What is that exhibit?

Trial Judge Advocate: Prosecution Exhibit 9.

Q Did you take one of those sticks too?

A Yes, sir.

Q Did you or not proceed further down in the Italian area after arming yourself with one of those sticks?

A Yes, sir, I went on down in the area.

Q Did you or not go with the group you have testified about further into the Italian area, or did you go by yourself?

A I went into the area just behind the group. I was the last man.

Q You were the tail man in the group?

A Yes, sir.

Q All right. Now, when you got further into the Italian area, did you see anyone?

A Yes, sir.

Q Well, give us the name of someone you saw.

A Private Robert Sanders.

Q Private Robert Sanders. Well, what did you see him do?

A Running the jeep into the tent, sir.

Q Where was that tent located? Do you want to step up here. Here is a map you can point to. Pointing to Prosecution Exhibit 2, this is barracks 719; here is Lawton Road; this is the mess hall.

A Yes, sir.

Q The 578th mess hall. And here is Italian barracks 708, Italian barracks 709, and here is the orderly room, and here is a tent, and here is a tent, and here is a latrine (indicating).

A Yes, sir.

Q Now, where did you see Private Robert Sanders run this jeep into a tent that you said he did?

A Right here, sir (indicating).

Q Now, right here. Will you put an "X" mark and "JS". That is your initials, "JS", isn't it?

A Yes, sir.

Q Put an "X" mark there at the spot.

A (Witness indicates as requested.)

Q Now, step over here with me and see if you see the accused Robert Sanders among this group and, if so, point him out.

A (Witness points to one of the accused.)

Q Is that the accused Robert Sanders?

A Yes, sir.

Q Now, you mentioned the accused William G Jones a while ago, and you identified the accused William G Jones. Did you see him in the area?

A Yes, sir.

Q What, if anything, was he doing?

A I seen him had a club and knocked a bulb out of one of the guard lights on the outside.

Q A bulb. A light bulb?

A Yes, sir.

President: He said he saw him what?

Law Member: Knocked the bulb out.

Q And you saw that was at one of the what?

A At one of those Italian barracks.

Q Well, step up here to the map and let's show the court where that was; where it was located.

A This was the one right here (indicating).

Q Pointing to 708. And where was it located; on which side? By that I mean, point to where the light was.

A The light was right out here in front (indicating).

Q Right out in front of the barracks?

A Yes.

Defense: I think the front he is indicating is on the Lawton Road side.

Trial Judge Advocate: That's right.

Defense: Because we have been referring to the front of the orderly room as just the reverse.

Trial Judge Advocate: That's right.

Q Do you know the accused Emanuel Ford?

A Yes, sir.

Defense: What is that name?

Trial Judge Advocate: Emanuel Ford.

Q Did you see him in that area on the night in question?

A Yes, sir.

Q What was he doing?

A He was standing in the group of men by the window.

Q By the window?

A Yes, sir.

Q Of what building?

A The orderly room.

Q All right. Now, let's step to the map again and let's show the court where that was.

Law Member: Did he say he was standing in the window?

Trial Judge Advocate: By the window of the orderly room.

Q Now, here is another plat which gives the floor plan of the orderly room.

A Yes, sir.

Q And this is a door; this is a window; this is a side window;

and this is the front door of the orderly room (indicating on plat).

A Yes, sir.

Q Now, where did you see Emanuel Ford stand?

A Right here, sir (indicating).

Q In this group of men right here?

A He was right here in this group of men by the window (indicating).

Q "By this window" is the window of room Y. All right, come with me now and see if you see Emanuel Ford among these accused.

A Yes, sir.

Q Which one is he?

A He is right over there (pointing to one of the accused).

Q This man (indicating)?

A Yes, sir.

Q Do you know Sergeant C W Spencer?

A Yes, sir.

Q Did you see him on the night in question?

Defense: If the court please---I withdraw my objection.

Q Will you answer the question, please? Did you see Sergeant C W Spencer on the night in question?

A Yes, sir.

Q And where did you see him?

A Down there by the orderly room, sir.

Q The same orderly room that you have pointed out to the court before on th s map, Prosecution Exhibit 3?

A Yes, sir.

Q What, if anything, was he doing?

A He was there in the group throwing rocks.

Q Throwing rocks in what direction?

A In the window.

Q Of what?

A Of the orderly room, sir.

Q Is that the one you pointed out a while ago or a different window?

A That same window, sir.

Q The window to room Y?

A Yes, sir.

Q All right. Do you know the accused---wait a minute. Let's get Sergeant Spencer identified. Will you come with me? Now look over this group of accused and see if you see Sergeant Spencer?

A (Witness indicates one of the accused.)

Q Is that Sergeant Spencer?

A Yes, sir.

Q C. W. Spencer?

A Yes, sir.

Q Now, do you know the accused Arthur Stone?

A Yes, sir.

Q Did you see him on the night in question?

A Yes, sir.

Q Where?

A By the orderly room, sir, in the group of men while those rocks was being chucked.

Q Step up to the map, Prosecution Exhibit 3, and point out where you saw the accused Arthur Stone?

A Right here, sir, in this group of men (indicating).

Q The group of men you told the court about before?

A Yes, sir.

Q The witness pointed to in front of room Y. Come with me and see if you see the accused Arthur Stone?

A (Witness points to one of the accused).

Q Is that the accused Arthur Stone?

A Yes, sir.

Q And did you say what the accused Arthur Stone was doing?

A He was standing there in the group, sir, while they were throwing those rocks.

Q Now do you know Richard Barber?

A Yes, sir.

Q Did you see him?

A Yes, sir.

Q On the night in question?

A Yes, sir.

Q What, if anything, was he doing when you saw him?

A He didn't seem to be doing anything, sir.

Q Where was he when you saw him?

A He was standing there just by the orderly room door, sir.

Q Standing by the orderly room door?

A Yes, sir.

Q Which door?

A This door here (indicating).

Q Door E on Prosecution Exhibit 3. Now, come with me and let's get the accused Richard Barber identified. Look over this group of accused and see if you see the accused Richard Barber.

A This one (pointing to one of the accused).

Q That is the accused Richard Barber.

President: Which one did he point to?

Trial Judge Advocate: This one, if it please the court (indicating one of the accused).

President: The one on the end or the second?

Trial Judge Advocate: No, the second.

Q Now, do you know the accused Roy Montgomery?

A Yes, sir.

Q Did you see him on the night in question?

A Yes, sir.

Q What, if anything, was he doing?

A He was standing out in front of the orderly room, sir, with a group of mens and three American white soldiers was out there.

Q Now, come over here and point out on this Prosecution Exhibit 3 where it was that you saw Montgomery standing?

A Right over here, sir (indicating).

Q Over at door A?

A Yes, sir.

Q Close to door A?

A Yes, sir.

Q Did he have anything in his hand?

A Yes, sir.

Q What did he have in his hand?

A He had a club in his hand, sir.

Q Do you know the accused James Chandler?

A Yes, sir.

Q Did you or not see the accused James Chandler on the occasion in question?

A Yes, sir.

Q Where did you see him?

A In the orderly room, sir.

Q Now was he carrying anything?

A Yes, sir.

Q What?

A He had a little stand; looked something like an ashstand. I mean, a butt-stand, cigarette butt-stand rack.

Q State whether or not this piece of wood that I am passing to you has any appearance similar to what James Chandler was carrying?

A Yes, sir, something just like that.

Trial Judge Advocate: I offer it in evidence.

Law Member: Any objection, Major.

Defense: Same objection I made before on similar exhibits, if the court please.

Law Member: Well, it is received in evidence with the same understanding that it is a resemblance and not supposed to be the exact one carried by Chandler on the night in question. It will be received in evidence as Exhibit 19.

A stick was then marked Prosecution Exhibit 19 and received in evidence.

Q Private Sims, will you come up here? About where was Private James Chandler when you saw him carrying a cigarette butt stand similar to the one you have identified?

A In this room, sir (indicating).

Q Room Y?

A Yes, sir.

Q And where were you standing when you saw him?

A I was standing over there by the jeep.

Q Standing---

A Looking through the window.

Q Standing by the jeep and looking through the window of room Y?

A Yes, sir.

Q I want you, first, to identify the accused Roy Montgomery among these accused?

A Yes, sir. There is Roy Montgomery (pointing to one of the accused).

Q Point him out again.

A (Witness points to one of the accused).

Q All right. Did the court see that? It was the first man on the front row. Now, I want you to see if you can identify the accused James Chandler?

A There he is, sir (indicating one of the accused).

Q That is the third man on this second row from this end. Do you know the accused Booker Thornton?

A Yes, sir.

Q Booker T-h-o-r-n-t-o-n?

A Yes, sir.

Q Did you see him on the night in question?

A Yes, sir.

Q Where did you see him?

A On the way out to the area, sir.

Q Well, let's step to the map and see if you can point out about where you saw the accused Booker Thornton?

A Over here, sir (indicating). Going back across by this mess hall, going back over there (indicating).

Q Going back to the barracks?

A 719.

Q About the first spot you pointed to was where, so Major Beeks and members of the court can see it?

Law Member: So the Reviewing Authority can see it.

Trial Judge Advocate: Yes. I will have it marked.

Q Will you point again?

A Coming right back through here (indicating)

Q All right. Was this about where you pointed first (indicating)?

A Yes, sir.

Q We will mark that with a double "X".

A Yes, sir.

Q And put your initials on the side.

A (Witness indicates as requested.)

Q Did you or not at the time you saw the accused Booker Thornton have occasion to have any discussion with him or hear him make any statement?

A I heard him say, sir, he hit---

Q Well, did you first hear him say something---did you or not?

A Yes, sir.

Q What did you hear him say?

Defense: I haven't heretofore objected, but I think on admission the rule is well recognized that the time and place and all the circumstances should be fixed.

Law Member: Go into that, Colonel.

Q Where was the place that he made that remark to you, the remark you are getting ready to tell the Court about?

A Down in the Italian area, sir.

Q Was it or not at the spot you indicated on the map?

A It was at the spot.

Q It was at the spot.

A Where I indicated on the map, sir. It was just up that hill.

Law Member: Near the mess hall known as 700?

The Witness: Yes, sir.

Law Member: Was that when you were on your way back to Barracks 719?

The Witness: Yes, sir.

Law Member: At that time had the military police arrived in the Italian area?

The Witness: Yes, sir.

Law Member: And had sent you all home?

The Witness: Yes, sir.

Law Member: (To Trial Judge Advocate) Now, I guess you can ask the questions.

Q Now, Private Sims, what, if anything, did the accused Booker Thornton say to you at that time?

A I heard him say, sir, that he hit one twice.

Q He said he hit one twice?

A Yes, sir.

Q Come with me now and let's see if you can identify the accused Booker Thornton?

A (Witness indicates one of the accused.)

Q All right. The fifth man. Did the Court see who he pointed to? The fifth man in the front row from the end.

Law Member: Just a minute. To get the record straight, Major, you objected to that conversation on the grounds that

the time and the place had not been fixed, is that correct?

Defense: That is correct, sir. Time, place and circumstances.

Law Member: Well, of course, the circumstances cover a multitude of sins, but I am going to admit that conversation and abide by my previous ruling, holding it is a declaration against interest and not binding on any one of the other defendants.

Trial Judge Advocate: That's right, sir.

Law Member: And the court is so instructed. It appears that the event at this time was over and conversations thereafter are binding only upon the person making them.

Trial Judge Advocate: And it is being offered, if the court please, only as against that particular accused, and that is Booker Thornton.

Law Member: Well, with that understanding, it is received.

Q All right. Now, do you know the accused Frank Hughes?
A Yes, sir.

Q Did you see him on the occasion in question?
A Yes, sir.

Q Where did you see the accused Frank Hughes?
A Down there in the group, sir, by the orderly room.

Q What, if anything, was he doing?
A I didn't see him doing anything, sir.

Q All right. Now, about where was he standing? Let's point to Prosecution Exhibit 3.
A Right in the group over here (indicating).

Q That is in front of room Y?
A Yes, sir.

Q I mean in front of the window on room Y.
A Right there (indicating).

Q Let's get the accused Frank Hughes identified. See if you see him among the accused.
A (Witness points to one of the accused.) This is Frank Hughes.

Q Do you know the accused David Walton?
A Yes, sir.

Q W-a-l-t-o-n. Did you see him anywhere on the night in question?
A Yes, sir.

Q Where did you see him?

A In the orderly room, sir.

Q In the orderly room?

A Yes, sir.

Q Now, tell us where in the orderly room you saw him?

A Right here, sir (indicating).

Q Room R?

A Yes, sir.

Q Did he have anything in his hand?

A Yes, sir.

Q What?

A He had a club in his hand?

Q All right, come with me and see if you can identify the accused David Walton?

A This one right here (pointing to one of the accused).

Q The third soldier from the left in the front row?

A Yes, sir.

Q Do you know the accused Freddie Lee Simmons?

A Yes, sir.

Q Did you see him anywhere on the occasion in question?

A Yes, sir.

Q Where did you see him?

A Down there in the orderly room.

Q Let's see where you saw Freddie Simmons.

A Right in here, sir; in this group (indicating).

Q In that group you have told the court about?

A Yes, sir.

Trial Judge Advocate: (To the court) He is pointing to around the window of Room Y.

Q And do you know the accused Nathaniel Spencer?

A Yes, sir.

Q Did you see him anywhere?

A Yes, sir.

Q On the night in question?

A Yes, sir.

Q Where did you see him?

A In that same room.

Q That same group?

A Yes, sir.

Q Same place you have pointed out to the Court?

A Yes, sir.

Q Now come over with me and let's see if you can identify Freddie Lee Simmons first among these accused?

A (Witness points to one of the accused).

Q Now Nathaniel Spencer. See if you can identify him among the accused?

A This one here (pointing to one of the accused).

Trial Judge Advocate: (To the Court) The third man on the second row from the end.

Q Do you know the accused Loary Moore?

A Yes, sir.

Q Did you see him anywhere on the night in question?

A Yes, sir.

Q Did he have anything in his hands?

A Yes, sir.

Q What?

A A club.

Q All right. Now, come with me and see if you can identify the accused Loary Moore?

President: What did you say he had in his hand?

The Witness: A club.

Q Loary Moore.

A Here he is (pointing to one of the accused).

Trial Judge Advocate: (To the Court) The fourth from the end on the second row.

Q Now you have identified the accused Roy Montgomery. Did you hear the accused Roy Montgomery make any statement on the evening in question?

A Yes, sir.

Q Where was he standing?

A In front of the orderly room, sir.

Q What did you hear him say?

Defense: I am objecting to that, if the Court please. No time has been fixed yet.

Q Wasn't that the time that the Negro soldiers were around the

orderly room, the ones you have been telling the court about?
A Yes, sir.

Q All right. What did he say?

A There was a group that was around the American white soldier out there. So he come out and was trying to find out what was all the row about, and so they all was rushing to him, and Roy Montgomery throwed up his hands and hollered, "Whoa," and said, "Let's see what this American soldier has got to say".

Q He told the other Negro soldiers to halt; let's see what this American soldier has to say?

A Yes, sir.

Q Did you hear anything else, or does that tell the story you heard?

A That is all I heard him say, sir.

Q Did you or not notice whether there was a light on the outside of the orderly room?

A Yes, sir.

Q Was there or not such a light?

A There was a light, sir, in the front of the orderly room door.

Q Will you step to the map and point out where that light was?

A Right here, sir (indicating).

Q Over door A?

A Yes, sir.

Q Private Sims, have you been promised anything for testifying as a witness in this case?

A No, sir.

Q Any sort of an assurance or any promise of any kind been made you?

A No, sir.

Trial Judge Advocate: The Prosecution has no further questions.

Defense: If the court please, my examination of this witness is going to be rather extensive, and I don't like very much to start on it and have to continue it tomorrow.

President: How long do you anticipate it will take?

Defense: I anticipate I will be considerably more than an hour with him; possibly as long as two hours.

Law Member: Have you any stipulations or documentary

evidence we could offer in evidence now that would take up some of this time?

Trial Judge Advocate: No, sir, I have not.

President: I don't like to draw the case out any longer than absolutely necessary.

Defense: I thought we had made rather good progress. I cut my cross-examination down considerably on several witnesses, but it is very unsatisfactory to start with a witness and have to break in and have the examination go over.

President: All right. The court will adjourn until 9:00 tomorrow morning.

Defense: I am going to ask the court to admonish this particular witness about discussion of his testimony with anyone else.

President: Private Sims, you are cautioned not to talk about what you have testified about in court and not to talk to anybody about your testimony before tomorrow morning. You understand that?

The Witness: Yes, sir.

President: Major Beeks and Colonel Jaworski, will you come up here a moment? (To Defense Counsel), Do you want a particular segregation of this witness tonight?

Defense: I propose he be kept from other witnesses.

President: I believe in view of the fact he is still testifying that request is justified.

Law Member: Yes, but before you order it---

Trial Judge Advocate (interrupting): Let me say something, because I don't want the responsibility.

Law Member: Here is the point. They are awfully short of guards.

Trial Judge Advocate: Not only that, but we have absolutely no authority to confine him. If he is held for security, that is what you would be doing---if you stick him off some other place. As far as I am concerned, I am willing to do this. I am willing to tell him, as I have told each of the other men, I don't want him to talk to anyone. I have cautioned the other men, don't you talk to that witness until after you are through your testimony, and I will reiterate it a half dozen times with all of them involved.

Law Member: I don't think you will have any difficulty

about that.

Trial Judge Advocate: But I don't want to accept the responsibility of segregating or putting him in confinement, because I can't do it. He is just a witness and he is not charged.

Defense: Well, I don't know what your arrangements are. I have never asked you where you were keeping them. I don't know. I assume he will be held some place, and it might be arranged any witnesses testifying from the company could be held away---the other four or five.

Law Member: They have guards and the guards will be told they can't talk to this particular man, and I think that ought to satisfy everyone. We don't want to be in the position whereby in any conference we ordered a man's confinement. He is an American citizen and he is not charged with anything.

Trial Judge Advocate: I will do this. I will see if at the place where he is now, if that can be arranged, to where he will be placed somewhere away from those other four men.

President: The point I am making is this. They are under some kind of surveillance and some kind of watching at the present time; sort of a protective custody.

Trial Judge Advocate: Well, yes. The point about it is I couldn't afford to try to assure the Court beyond any question that wouldn't take place; but you haven't that available to you as to any witness. There is no witness to whom the Court can do that. The most we can do is to caution them and I will certainly do that in more ways than one.

President: The only alternative is to complete his cross-examination. If you want to do that and delay the opening in the morning---

Defense: If Colonel Jaworski will do as he stated, it will be satisfactory.

Trial Judge Advocate: I will do it in your presence.

Defense: You don't even have to do that. That is all I want.

Law Member: Everybody is satisfied then?

Trial Judge Advocate: Yes.

Defense: Yes.

Assistant Trial Judge Advocate: The record should show it is stipulated between the Prosecution and Defense that I have counted the rocks in Prosecution Exhibit 14 and that there are 17 rocks and 6 bricks.

Defense: It is so stipulated.

The court thereupon adjourned at 4:15 p.m., 21 November 1944, to be reconvened at 9:00 a.m., 22 November 1944.

LEON JAWORSKI
Lt. Colonel, J. A. G. D.
Trial Judge Advocate.

Fort Lawton Staging Area
Fort Lawton, Washington
22 November 1944

The Court reconvened at 9:00 a.m., 22 November 1944.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: The Prosecution is ready, sir.

President: Is the Defense ready to proceed?

Defense: The Defense is ready, sir.

President: The Court will come to order.

A roll call was then conducted by the Assistant Trial Judge Advocate of the accused; all of the accused were present.

Trial Judge Advocate: Let the record show each of the accused is present; that the personnel of the Court present at adjournment yesterday is present today; and that the same is true with respect to the personnel representing the Defense and the Prosecution.

The Interpreter and Reporter were also present.

Defense: I just indicated to the Prosecution, if the Court please, that I would like Sergeant Farr and Corporal Haskell brought back for one further question at least, on cross-examination, which I neglected to ask.

Law Member: Subject to objection by any member of the Court, that request will be granted.

Trial Judge Advocate: We will bring them back in the next day or two.

Defense; Counsel has agreed to it. I just wanted the Court to know.

Private Jesse C. B. Sims, 650th Port Company, a witness for the Prosecution, was recalled and testified further, as follows:

Trial Judge Advocate: Let me remind the witness that he is still under oath.

Defense: Yes, I wish you would.

Trial Judge Advocate: (To witness) You are reminded you are still under oath.

The Witness; Yes, sir.

CROSS EXAMINATION

Questions by Defense:

Q How old are you, Sims?

A 32, sir.

Q 32.

A Yes sir.

Q And how long have you been in the Army?

A I have been in the Army, sir, ever since the 16th of November.

Q 16th of November --

A (Interrupting) 1943, sir.

Q Of 1943?

A Yes, sir.

Q That is something a few days over a year?

A Yes, sir.

Law Member: Keep your voice up, won't you, Sims?

The Witness: Yes, sir.

Q Where were you inducted, Sims?

A At Houston, sir.

Q Houston, Texas?

A Yes, sir.

Q And when did you come to Fort Lawton?

A I came here to Fort Lawton in January.

Q In January?

A Yes, sir.

Q And you were assigned at that time to the 650th?

A Yes, sir.

Q Now about what time was it that the Italian Service Companies first occupied the area adjacent to the colored area at Fort Lawton?

A That, sir, I don't know.

Q Well, about what time was it, Sims, that you first saw them?

A Sir, I couldn't exactly tell you.

Q Well, I don't expect, Sims, for you to give the very exact day, but what is your best recollection of about when it was?

A I can't remember that, sir.

Q You can't remember?

A No, sir.

Q Well, they had been there a period of several months anyhow, hadn't they?

A I don't know, sir.

Q You don't know?

A No, sir.

Q Now during the time you were in the 650th Port Company did you ever hear of the Geneva Convention?

A I don't get what you mean, sir.

Q Well, do you know what the Geneva Convention is?

A No, sir.

Q None of your Company officers ever gave your Company any instructions with regard to the Geneva Convention?

A No, sir.

Q Did you ever receive any instructions from your Company officers with regard to the rights of prisoners of war?

A No, sir.

Q None of the members of the 650th Company ever received any instructions from their Company officers with respect to the rights of prisoners of war under the Geneva Convention?

A I don't know, sir, whether they did or not.

Q You never did?

A I never did, sir.

Q And you never did in a group in which you were present, is that right?

A I never did in a group or alone either, sir.

Q Try to speak up loudly and distinctly so all the members of the Court can hear you.

A Yes, sir.

Q Now, I think you stated yesterday that you have never been promised immunity in this case, is that correct?

A I don't get what you mean, sir.

Q Well, Colonel Jaworski asked you yesterday if you had ever been promised immunity in this case, and you answered no. What did you think Colonel Jaworski meant when he asked you that question?

Trial Judge Advocate: I think the record will show I asked him if he was promised anything. I don't believe I used the word immunity.

Defense: Well, I may be mistaken. Will the Court pardon me just a moment?

Law Member: Yes.

Defense: I have used the word's immunity in my own notes, Counsel, but you may not have asked it. I am not sure.

Law Member: I have here he hasn't been promised anything for testifying.

Defense: All right. I will withdraw that question.

Q You stated yesterday that you hadn't been promised anything for testifying in this case, is that correct?

A Yes, sir.

Q Weren't you told that if you testified in this case that it would be recommended that you be not charged at any future date?

A I don't remember anything about that, sir.

Q Well, didn't the other men that were outside there, Daymond and Clarke, tell you that they had been promised complete freedom and exoneration in this case?

A They never told me anything, sir.

Q They never told you that at all?

A No.

Q You don't hope by testifying in this case you will never be charged of being down there yourself?

A Sir, if there is any charges against me, what's the difference, sir? It is just it.

Trial Judge Advocate: What is that question?

(Question read by reporter.)

Trial Judge Advocate: I want that answer too, please.

(Answer read by reporter.)

Q Now, Sims, will you --

Law Member: Will you read those again, the question and answer?

(Question and answer again read by reporter.)

Defense: I move to strike his answer, if the Court please. It is not responsive.

Law Member: Motion denied.

Defense: If the Court please, my question calls for a yes or no answer.

Law Member: I think the answer is responsive.

Q I will ask you again, Sims, if by testifying in this case you hope charges will be never brought against you? Don't you? Now answer that yes or no?

A Sir, I don't know what to say about that.

Q Don't you hope by testifying in this case to get your complete freedom?

A The complete freedom, sir. Would you mind explaining what that is?

Q In other words, you hope to go back and never have charges preferred against you arising out of this riot on the night of August 14?

A Sir, I haven't no hopes.

Q You would just as soon be charged as being a participant in this riot on August 14 as not; you don't care, is that correct?

Trial Judge Advocate: I don't think that is proper questioning to ask him if he would just as soon be charged with a matter of that kind. After, Counsel has every right to go into it, of asking the question whether he has been promised anything, whether that has affected his testimony, but to ask a witness whether he would just as soon be charged as not be charged does not bear on that phase of the interrogation and I think it is a question that is unfair to the witness, because there is no human on earth that would as soon be charged with something as not be charged with it.

Law Member: Reframe your question.

Defense: Well, if the Court please, I have a right to show the interest of this witness in the outcome of this case and what is going to happen to him. I have tried to ask it by proper questions; he professes not to understand them. I am doing the very best I can on asking other types of questions. I realize the questions aren't phrased as well as they might be, or as I would ask some other witness. I have asked him different types of questions and he professed an ignorance or lack of understanding of what I am driving at.

Trial Judge Advocate: I think he has answered your questions pretty well. I think when he told you that he didn't expect anything that that was a rather definite answer, and I don't mind any further interrogation along that line; but to ask somebody if he would just as soon be charged as not be charged, that is a sort of question I don't think is proper.

Law Member: What is the question?

(Question read by reporter.)

Law Member: Do you understand that question, Sims?

The Witness: Sir, that I be just as soon be charged as to not.

Law Member: Would you just as soon be sitting over with the other 42 accused as sitting where you are as a witness?

The Witness: Well, sir, I have told the truth, and if they put me over there, that is all right too.

Law Member: Does that answer your question?

Defense: No, he hasn't answered the question, if the Court please, and I move the answer be stricken.

Law Member: I think the question calls for an answer that the Court would almost take judicial notice of.

Defense: Well, I quite thoroughly agree with the Court, that the answer is quite obvious and the Court could take judicial notice of it, but this witness won't answer it.

Trial Judge Advocate: If it please the Court, I submit there could be nothing more plainer coming from the lips of this witness than the last statement he made. I don't see how counsel can find fault with it. When this witness says that he has told the truth and if he is to be placed over there with the rest of them, that is all right; that is just as much as anybody can say to questions of that kind.

Defense: Of course, if that is in the inevitable, there is nothing he can do about it; but we certainly have the right to know what his hopes and desires are by taking the witness stand in this case.

Law Member: Previously he said if there is any charges, why, that is that.

Defense: What is the Court's ruling?

President: Private Sims, I will ask you one question. Would you rather go to jail for two years or go free?

The Witness: Well, sir, I would rather go free if I could.

President: There is no question about it. Is that the answer you wanted?

Defense: Well, of course, I think perhaps the Court's question rather assumes at this stage of the proceeding perhaps some of these men are going to be confined.

Law Member: No.

President: No such assumption at all. You asked him if he would rather be over with the accused or rather be in the witness chair. He doesn't maybe understand that question. I asked him if he would rather go to jail for a certain length of time or go free. He says he would rather go free. I am making no assumption of what is going to happen at all.

Law Member: I think the question is sufficiently answered. The objection is sustained.

Q With whom, Sims, have you discussed your testimony in this case?

A With whom I have discussed my testimony in this case?

Q Yes.

Q Sir, I don't know that discussed exactly.

Q Well, with whom have you talked about the testimony you gave in this case yesterday prior to coming -- taking the witness stand here? Who did you talk with about the testimony you were to give?

Trial Judge Advocate: You mean prior to him even testifying yesterday?

Defense: That's right.

A Not anyone, sir.

Q Not anyone. Now, on the night of August 14, Sims, did you go over for supper?

A I don't remember, sir, whether I did or not.

Q You don't remember whether you went over for supper on the night of August 14th?

A No.

Q Now, that is the night of the riot; you understand?

A Yes, I know.

Q And you don't know whether several hours prior to that riot you went over to the mess hall for supper or not?

A I don't know, sir, whether I did or not.

Q You remember when I talked with you the other day down in Major Manchester's office?

A Yes, sir.

Q You remember I asked you some questions, didn't I?

A Yes, sir, you asked me a few questions.

Q And you answered some questions, didn't you?

A Yes, sir.

Q And then you refused to answer any more questions at all, isn't that correct?

A Yes, sir, after you were going to take a statement.

Q Do you remember me asking you this question --

Trial Judge Advocate: What was that last answer?

Defense: He said after I wanted to take a statement.

Q Strike that last part of my question. What was there, Sims, about my wanting to take a statement that you were afraid to give?

A There wasn't anything, sir, that I was afraid, sir. I had given already one statement.

Q Do you want this Court to understand that you would have talked to me and given me all the information I wanted if it wasn't being reduced to writing?

A Sir, I had already given a true statement.

Q Will you answer my question, Sims?

Trial Judge Advocate: I believe he has a right to explain; that it calls for the sort of an answer that requires an explanation.

Defense: Well, the rule quite definitely is where a question calls for a yes or no answer the Witness must answer yes or no, and then if he wants to make an explanation, that is in the discretion of the Court to permit him to do so.

Trial Judge Advocate: I think the witness should be advised he has a right to explain.

Law Member: What was the question?

(Question read by reporter.)

Law Member: Over-ruled.

Q Will you answer that question, Sims?

A Repeat the question over, sir.

(Question again read by Reporter.)

A Sir, I don't hardly know exactly how to explain that.

Q Will you answer the question first yes or no, and then you can go ahead and make any explanation you want.

A Will, sir, you repeat that question over to me. I mean you, sir.

Defense: Will you read the question, Mr. Rasmussen, and read it slowly to him.

Law Member: Well, he has asked you too.

Defense: I can't remember how I phrased the question.

Law Member: He says he can't answer it in the form it is, Major. Try to reframe it.

Q Do you want the Court to believe, Sims, that you would have given me an answer to the questions I asked you if they weren't being written down?

A Well, sir, I had already given one statement.

Defense: I move to strike the answer, if the Court please, as not responsive.

Law Member: Go on.

A I had already given one statement, sir, and I told the truth, and, sir, I didn't see why there was any use of being another written statement since I had already given one, sir. So that was the one reason, why, sir, I didn't care to answer those questions.

Defense: I still think the answer is not responsive and I move to strike it and have the witness directed to answer this question.

Law Member: The motion is denied.

Defense: It is quite obvious, if the Court please, there is no question but what this witness gave previous statements, gave half a dozen to the Prosecution. I don't know. But the Defense has a right to interview witnesses --

Law Member: He has given you the reason why he didn't answer your questions in front of Major Manchester.

Defense: But the witness already stated, if the Court please, the reason he didn't talk to me was because it was taken down in writing.

Law Member: Then what more did you want?

Defense: I have a reason to inquire why.

Law Member: Well, you inquired why and he said that he didn't do it because he had already signed another written true statement.

Defense: Well, I think it quite clearly appears in the record what I am trying to develop here. I will leave it to the Reviewing Authority to determine.

Q Is your recollection any better than the day I talked to you down there, Sims, in Major Manchester's office, than it is today?

A Sir, I don't know.

Q You don't know. I will ask you if down there that day when I talked to you in Major Manchester's office I didn't ask you the following questions, to which you made the following answers: (Reading) "On the night of August 14 what time did you have supper?"

A Sir, I told you --

Q Now, just a moment. Well, what did you tell me?

A I told you, sir, I didn't know.

Q You told me you didn't know. All right. Now, I will ask you if it isn't a fact that you answered this way: (Reading) "We always had supper around 5:30 or 6:00. Q What time did you finish? A Well, sir, I couldn't tell you the time, but I would say not over 15 or 20 minutes. Q So you undoubtedly were out of the mess hall that night by 6:00? A Yes, sir." Didn't you so testify to those questions?

A No, sir.

Q You did not?

A Not that.

Q Now, is your recollection any better now as to what time you had supper that evening?

A Well, sir, you want me to explain that to you, what I said?

Q My question of you, Sims, was if your recollection is any better now as to what time you had supper on the night of August 14. You just answer that question.

A I don't know whether I ate any supper.

Q You don't know whether you ate any supper or not?

A No, sir.

Q Did you go down to the PX on the night of August 14th?

A Yes, sir, I went down there on the evening of August the 14th.

Q Yes. About what time did you go to the PX?

A That is what I don't know, sir. I don't know what time it was when I went down there.

Q Was it dark or light when you went down there?

A It was light.

Q Who did you go to the PX with?

A Not anyone.

Q You went down there alone?

A That's right, sir.

Q Did you go to the PX on the night of August 14th with more than one person?

A When I went there that evening, sir, I didn't leave there until that night.

Q You went there in the evening and left at night?

A Yes, sir.

Q Well, after you left did you at any time go back?

A No, sir.

Q And you didn't go down to the PX that evening with any other person?

A No, sir.

Q Isn't it a fact that you went down there with William Montgomery?

A No, sir.

Q You know who William Montgomery is?

A Yes, sir.

Q And you didn't go down there with him?

A I didn't go down there with him, sir.

Q How long approximately were you in the PX?

A Well, sir, I couldn't exactly say.

Q Well, were you there 30 minutes, were you there an hour, were you there an hour and a half, were you there two hours? Approximately how long?

A I was there until the PX closes, when the PX closes.

Q What time does the PX close in that area?

A Just estimating the time, sir, it would be around 9:30 they closed.

Q Well, the PX closes at the same time every night, doesn't it?

A Well, you want me to explain that, sir; the way they generally have a rule of it?

Q All right, go ahead and explain it.

A At 9:15 is when they stop selling beer and etc. Then from then until, say, about quarter to ten people who got beer there, and stuff around there, drinking, they drink that up; but they can't buy no more. They can sit in there until that length of time, drinking that up, and then go out. But no more can be sold.

Q After 9:15. After that hour you can't purchase beer?

A No, sir, not buying anything like no beer.

Q But you can still sit in the PX and drink beer that you have purchased prior to 9:15?

A That is, if it is a crowd in there. If not, you can rush

on and drink that down and go out.

Q What is the custom around there? For the boys to buy up a lot of beer before 9:15 and then drink it afterwards?

A Well, sir, that is what I don't know. They do like they want to do.

Q Well, did you ever do that yourself?

A No, sir, I drank until I got enough, and then when I got enough I figured I would go on back.

Q Who were you drinking beer with down there on the night of August 14?

A I don't remember drinking any beer with anyone on the night of August 14.

Q There was a lot of colored soldiers down there in the PX that night, wasn't there?

A Yes, sir, there was plenty of them down there.

Q Weren't you sitting down at one of the tables drinking beer?

A No, sir.

Q Where were you drinking beer?

A Standing at the counter.

Q Standing at the counter and drinking beer all evening that you were down there, or did you sit down?

A I wasn't standing there just steady drinking beer all evening at that one place.

Q Did you sit down at the table any?

A Not to drink no beer, sir.

Q Who did you see in the PX that night that you know?

A I don't remember anyone I seen in there I know that night.

Q You can't remember anybody in there that night?

A No, sir.

Q You can't remember anybody you talked to?

A I remember two boys talking to that evening.

Q Who were they?

A That was William Montgomery and A. D. Bowman.

Q As a matter of fact, you were seated at one of the tables there for some little time with William Montgomery drinking beer, weren't you?

A No, sir.

Q You weren't. Well, after you left the PX where did you go, Sims?

A I came over to the day room.

Q That is across the street, isn't it?
A Yes, sir.

Q And do you recall approximately what time it was you went into the day room?
A Sir, I couldn't exactly recall the time that I went in there, but I can tell you this one thing. The day room is supposed to close at 10:00 and I wasn't in there many minutes.

Q Before the day room closed?
A Yes sir.

Q Well, your outfit, Sims, was alerted to move out of Fort Lawton the next day on August 15th, wasn't it?
A That is what they told me, sir.

Q Supposed to leave. And you were going to an overseas destination, weren't you?
A Sir, I don't know where we was going.

Q Well, as a matter of fact, weren't you down there at the PX celebrating a little bit because you were leaving the next day for an overseas destination?
A Sir, any time I got hold of any money I would go down there and celebrate. There wasn't anything special on that day.

Q You like to celebrate when you got a little money, do you?
Sims?
A Yes, sir.

Q Well, who did you see over in the day room that you know?
A Sir, I don't remember now.

Q You don't remember?
A No, sir.

Q Did you go over to the day room from the PX alone?
A Yes, sir.

Q And after you left the day room where did you go?
A Came over to the barracks, sir.

Q Went over to your barracks?
A Yes, sir.

Q Did you leave the day room with anyone?
A No, sir.

Q You say you didn't or you don't recall?
A I did not leave the day room with anyone, sir.

Q You left the day room by yourself and went to your barracks?
A Yes, sir.

Q Did you stop in at the 578th mess hall that night on your way to your barracks?
A I don't remember stopping there, sir.

Q You don't remember. There was a party going on over there that night, wasn't there?
A I don't know.

Q You mean to say that as you walked up the street from the day room to your barracks you did not notice whether a party was going on in building 700?
A I didn't pay any attention to that, sir.

Q You didn't pay any attention?
A No, sir.

Q Well, approximately what time was it you reached your barracks?
A Sir, that is what I don't know, the time that I reached the barracks.

Q Well, you left the day room about closing time, 10:00, didn't you?
A That is the time it closed, sir.

Q Well, about how long did it take you to walk from the day room up to your barracks?
A Well, I couldn't say. It might be about three minutes.

Q About three minutes. You live in building 719, don't you?
A Yes, sir.

Q And you live upstairs or downstairs?
A Downstairs.

Q And when you got back to your barracks what did you do?
A I heard the boys upstairs shooting dice and I went up there and got in the game.

Q Where was that game going on upstairs?
A It was kind of as you walk up the stairway, just estimating at it. It might have been about, I will say, about four feet from where the last step is as you go upstairs.

Q Well, tell us this, Sims. Was the crap game in the front part of the barracks or in the rear part?
A It was in the front part.

Q Quite a crowd around there?
A Sir, I don't remember seeing over about six men around the game.

Q About six men. And you think that is all the men that were

around in the vicinity of the crap game?
 A That is all I remember seeing, sir.

Q Were there quite a number of men in bed around there in the barracks?
 A I didn't pay any attention to that, sir.

Q You didn't pay any attention?
 A No, sir.

Q You walked up through the barracks and didn't pay any attention to whether there were men in bed around there or not?
 A I didn't go through the barracks, sir. I walked up the stairway and there was the game, crap game.

Q Well, in walking up the stairway to where the game was you have to pass some bunks, don't you?
 A Might have had to pass about two, sir.

Q About two. Well lighted upstairs there, isn't it?
 A Lighted?

Q Plenty of lights upstairs in your barracks?
 A Yes, sir, there is lights there.

Q And you had to look right at some of the bunks as you went by them, didn't you?
 A No, sir, I didn't have to look right at the bunks.

Q What was obstructing your vision?
 A That crap game.

Q You had your mind so much on this crap game that you couldn't notice what was around you, is that it, Sims?
 A That's right, sir.

Q Who was it in that crap game that had money that you thought you would like to get your hands on?
 A Sir, I didn't have no special one.

Q You didn't care from whom you got the money?
 A No, sir.

Q All right. Tell us then who was in the crap game.
 A The mens I remember seeing in the crap game were Richard Sutliff, A. G. George --

Law Member: Who was that; Sutliff?

Trial Judge Advocate: And A. G. George.

Q That is Addison George, isn't it?
 A Yes, sir. Willie Scott, Henry Jupiter, Stanley Balden, and myself.

A Who was banking the game when you got into it?
A I don't remember, sir, who was banking the game.

Q You don't recall who was banking the game?
A No, sir.

Q Wasn't Arthur Hurks banking the game?
A I don't remember seeing Arthur Hurks around no game.

Q You don't recall that he was there, is that right?
A I don't remember seeing him there, sir.

Q Well, how long did you stay around the crap game?
A Well, sir, I couldn't exactly say about how long I stayed around there.

Q Well, were you there for 15 minutes, there half an hour, or there an hour?
A I was there, sir, until it broke up.

Q About how long was that?
A It broke up when that whistle blow.

Q How long was that?
A That is what I don't know, the time how long it was.

Q Well, did you do pretty well in the crap game; were you able to stick around a little while?
A I win three and a half, sir.

Q Was that doing well that evening, Sims?
A Yes, sir, that was doing well.

Q Now, as a matter of fact, Sims, you were losing that evening, weren't you?
A No, sir, I didn't lose that evening.

Q Weren't you doing a lot of beefing around there about losing your money?
A No, sir, not me, because I didn't have but a dollar and a half when I come in there.

Q Didn't you lose that dollar and a half and beef about it?
A No, sir. When I go out of there I have five dollars.

Q Well, after you heard the whistle that you have told us about here on direct examination, you went downstairs?
A Yes, sir, I went on downstairs.

Q Went out in front of the barracks?
A Went to the opposite side of the barracks, the left side of the barracks.

Q Now, is it pretty well lighted out there in front of your barracks?

A No, sir, it wasn't so light out there.

Q It wasn't well lighted. Was there a light on the outside of your barracks in front here?

A I don't remember that light being there.

Q You don't remember any light?

A No, sir.

Q What street lights were there down there in that vicinity, Sims, on that night?

A Sir, that is what I don't know. I don't remember seeing any street lights down in that area, sir.

Q You don't recall seeing any street lights up and down the area at all?

A Not there, sir, where we were.

Q Well, now, when you were out in front of 719 did you have occasion to look across the street at building 700, the mess hall?

A No, sir, I never did look over there.

Q Did you ever notice whether there were lights in that mess hall or not?

A No, sir, I never paid any attention.

Q Did you notice whether there were lights in building number 718 over here or not?

A I don't remember whether there was or not, sir.

Q You don't remember. And you don't remember whether there was a light burning in front of 719 or not?

A No, sir, I can't remember of a light burning there or not, but I don't think there was.

Q When you got out in front of the barracks, how many men did you see standing around out in front there?

A It was a group of men, sir.

Q Well, I assume there was a group, but how many in the group?

A Sir, that is what I didn't take time to count.

Q A large group, a small group?

A It was a pretty large group.

Q Well, would you think 50 men in it?

A Well, I couldn't exactly say, sir. It may have been more than 50.

Q May have been more than 50. You think there were at least 50, is that right?

A Yes, there was at least 50 men that I know of.

Q At least 50 men. Was Montgomery out there at that time? I am talking about William Montgomery now.

A Yes, sir, he was out there lying on the sidewalk.

Q Lying on the sidewalk. What was his condition at that time?

A All I know, sir, he was laying out there.

Q Did he appear to be dead?

A I didn't get that close to him.

Q Well, were you around there until such time as he was taken away?

A I don't remember, sir, whether I was or not.

Q Do you recall whether or not an ambulance or a jeep came up that Montgomery was put in and they took him away while you were still there?

A I don't remember while I was there no ambulance or nothing come picking him up right then.

Q Well, about how long did you remain out in front before you went down to the Italian area?

A Sir, I couldn't exactly say how long it was. I didn't have no watch; couldn't tell you, sir, how long I stayed out there.

Q Well, I don't suppose you can tell me in minutes and seconds how long you were out there, but were you there five minutes, ten minutes, 15 minutes, 20 minutes, or approximately how long?

A I couldn't make no approximate about that, sir, because I don't know how long I was standing.

Q You are not able to give us any idea whatsoever of how long you were out there in front?

A No, sir.

Q Well, while you were there did the crowd continue to grow or was it reduced in numbers?

A Some begin to come out and some was beginning to go down into the Italian area.

Q Others were coming out and others were going down towards the Italian area, is that right?

A Yes, sir.

Defense: By the way, Colonel Jaworski, I have the figures here on the number of colored soldiers in that area. I wonder if we might stipulate on it.

Trial Judge Advocate: In what area?

Defense: In the colored area down there we are talking about.

Trial Judge Advocate: You mean at Fort Lawton on August 14?

Defense: Yes.

Trial Judge Advocate: Let me check them during the recess or noon hour.

Defense: Yes. You will find on that list I have handed you all the colored units at Fort Lawton. I think it is agreed between us the 650th, 651st and 578th were in this immediate area.

Q Now, while you were out in front of barracks 719 did you have any conversations with anyone prior to the time you went down to the Italian area?

A No, sir.

Q You didn't talk to anyone?

A No, sir.

Q You testified something yesterday about the first group that went down to the Italian area. How many were in that group?

A The first one I remember seeing, sir, going down into the Italian area was about five men, sir.

Q About five men?

A Yes, sir.

Q You didn't see them go to the Italian area, did you, Sims?

A I was standing looking at them.

Q You were standing looking at them in the vicinity outside where you have already told us it was so dark you couldn't recognize anyone; is that right?

A I didn't tell you, sir, I couldn't recognize them.

Q All right. I want you to come over here on Prosecution Exhibit 2 and point out to the Court just how far you could see those first five men go you have talked about.

A Let me have your pencil, sir. Here is 719 here (Indicating).

Q That's right.

A The group of men was standing right here in the road here (indicating).

Q That is off to the side of barracks 719 to the south.

A Yes. And here goes the road down here (Indicating).

Q That is Lawton Road you are talking about?

A Yes. Well, if I am standing here and a group of mens leave from here, and go on down this road here (Indicating) --

Q Down Lawton Road. Yes?

A You mean to tell me I couldn't recognize --

Q (Interrupting) I am not telling you anything, Sims. I am asking you. I am asking you how far you could see those five men as they went down towards the Italian area. That is what I am asking.

A They were close enough to me for me to see them.

Q My question is, Sims, how far down the street could you see them go?

A I seen them again after they got down here to this barracks, this barracks down here (Indicating), by the reflection of the guard light on that end.

Q You stood up here in front of barracks 719 and watched those men go all the way down the street?

A By that time, sir, I was on my way going on with the last group of mens.

Q My question was to you as you stood up in front of 719 how far down the street could you see ~~that~~ first group of men after they left?

A Sir, did I tell you I was standing in front of 719 or was standing here to the opposite side of 719, sir?

Law Member: Where were you standing?

Q Oh. Show us where you were standing.

A I was standing here to the opposite side of 719; right here (Indicating).

Law Member: Well, what is that? The southwest corner of 719?

Defense: Yes, that's right.

Q And you stood there and you watched a group of five men start out towards the Italian area, didn't you?

A I seen them leave out, sir.

Q Now how far could you see them go at that time and before you left the front of 719?

A How far ahead I seen them go?

Q Yes, how far could you see them go?

A I could see them all the way going down there, sir.

Q You could stand and see them, you could stand in front of 719 and see them go all the way down to the vicinity of barracks 708?

A Yes, sir.

Q You could see those five men go down there?

A Yes, sir.

Q All right. Now tell us where that group of five men that you talk about entered the Italian area?

A Well, sir, after they passed that mess hall and there is a little kind of a hill there, where the minute they got down in there, why, that is into the Italian area.

Q Well, then, you couldn't see them after they got by the end of that mess hall, could you?

A Here is the mess hall here (Indicating).

Q I understand that.

Law Member: That is 700.

Defense: That's right.

I could stand and look at them going into there, but making out exactly who the five men were, I could not tell.

Q I didn't ask you who the five men were. I asked you to tell the Court where these five men entered the Italian area.

A Well, sir, when they passed the mess hall, that is the Italian area.

Q Well, look at this piece of ground here that is bounded by Wyoming Avenue and Lawton Road. You understand that?

A Yes, sir, I understand that.

Q Now whereabouts within that area bounded by Lawton Road and Wyoming Avenue did these five men enter?

A This is where I seen the bulb being broke out of the front --

Law Member: Sims, you said, "This is where I saw them." Now where was that again?

Defense: No, he did not say that. He said, "That is where I saw the bulb broken out."

Law Member: Is that what you said?

The Witness: Yes, sir. I said this is where I seen the bulb being broken out of this barracks (Indicating).

Law Member: That is at the Lawton Road side of barracks 708?

The Witness: Yes, sir!

Defense: It is clearly not responsive to my question, if the Court please.

Q I am asking you where it was you saw those five men enter the area of ground bounded by Lawton Road and Wyoming Avenue.

A I seen them when they left here, sir (Indicating). When they get on by here, here is the Italian area right here (Indicating).

Q That is the area bounded by Lawton Road and Wyoming Avenue?

A That is the Italian area. This part here is supposed to be the colored, is that right?

Q The area bounded by Wyoming Avenue, Lawton Road and Virginia Avenue is the colored. That's right.

A All right, sir. When these men crosses in here ((ndicating) --

Q You mean cross Wyoming Avenue coming down Lawton Road?
A Yes. When they crosses in here they are in the Italian area (Indicating).

Q Is that where you saw them cross, where you got your finger there?

A I seen them when they come in, sir. I seen them when they come up this road here (Indicating).

Q All you could see them was across Wyoming Avenue?

A And when they made it to the light here (Indicating), I made out who one man was.

Q You could see them as they crossed under the light on the Lawton side of barracks 708?

A I seen one man right here (Indicating).

Q Did you see the other four with him?

Law Member: He said he saw one man here. Where do you mean?

The witness: One man right here in front of this barracks (Indicating).

Law Member: And that is barracks 708, is it?

The Witness: Yes, sir.

Law Member: And on the Lawton Road side of it?

The Witness: Yes, sir, this side right here (Indicating).

Q Now, at the time you say that you recognized the one man in front of the barracks 708, were you still up in front of 719?

A No, sir, I was on my way down.

Q You were on your way. Did you go down in the next group that went down?

A I went down in the last group, sir.

Q In the last one?

A Yes, sir.

Q Well, between the time that first group of five men left and the time that you went, there was still another group that went, is that right?

A Yes, sir.

Q And how many were in that group?

A That is what I don't know, sir.

Q You have no idea whatsoever?

A No, sir. Just estimating, I would say it would be around

approximately about 15 or 20.

Q About 15 to 20. And then you went down later yourself?

A I went down in the group, sir; a group with Arthur Hurks, sir.

Q And what kind of a weapon did you have?

A Piece of 1 x 4, sir.

Q A piece of 1 x 4?

A Yes, sir.

Q About how long?

A About that long (indicating).

Q About three or four feet long?

A About three feet long.

Q About three feet long. Did you personally use that piece of 1 x 4 on any Italians?

A No, sir.

Q You didn't strike one of them?

A No, sir.

Q What did you take that stick down there, with you for, Sims?

A Well, sir, when Arthur Hurks hollered, "Come on mens, let's go," well, I just went out there and grabbed me a club and went on down with the bunch too.

Q What did you grab the club for?

A All the rest of them were grabbing clubs.

Q You just grabbed it because the rest were?

A Yes, sir.

Q You didn't have any intention of using that club?

A No, sir, not unless somebody ran out and hit me.

Q You were just taking that club down there yourself for defensive purposes, is that right?

A Yes, sir, for myself.

Q If somebody attacked you you were going to defend yourself?

A Sure, I was going to hit him too.

Q How were you dressed as you went down there, Sims?

A Sir, I couldn't tell you because I don't know, --what I had on that night.

Q You don't recall what you had on that night?

A No, sir.

Q Did you have on a helmet?

A No, sir, I didn't have on no helmet.

Q You didn't have on any helmet?

A No, sir.

Q What time did you get back to the barracks that night?

A Sir, I didn't have any watch.

Q As a matter of fact, you were one of the very last men to come back up there, weren't you?

A When the M.P. came down and blowed his whistle then we got out; come back to the barracks.

Q Were you down there when the M.P. came?

A Yes, sir, I was down there when the M.P. came.

Q And whereabouts were you when the M.P.'s came?

A Standing down there behind the barracks -- the little tent.

Q You were standing behind the little tent?

A Well, right at the back of the tent; between there.

Q Did you see John Pinkney that evening?

A I don't remember seeing him.

Q You don't remember seeing him?

A No, sir.

Q As a matter of fact, you weren't any place in the colored area at the time the M.P.'s arrived, were you?

Trial Judge Advocate: Don't you mean the Italian area?

Defense: Yes, thank you.

Q In the Italian area, I mean, Sims?

A I was down there when the M.P.'s arrived in there in the Italian area.

Q And isn't it a fact that you didn't arrive back up to your barracks until after 1:00 in the morning?

A I don't know anything about it. I don't know what time it was when I came back.

Q And when you came into your barracks weren't you all covered with mud?

A No, sir.

Q You were not covered with no mud?

A I was not covered with no mud, sir.

Q Now, when you went down to the Italian area whereabouts did you personally enter the area?

A I went on down that road, sir, the way that the other mens went.

Q You went down Lawton Road. And whereabouts did you enter the area? Show us on Prosecution Exhibit 2 over here.

A Let's point out from here, sir (indicating).

Q You left from 719 and came down Lawton Road?

A Yes, sir, right on across.

Q Across Wyoming Avenue?

A Yes.

Q Past barracks 708?

A That's right.

Q Past barracks 709?

A Yes, sir.

Q And where did you enter the area? Where did you leave Lawton Road and go into the area? That is what I am trying to get at?

A Here is Lawton Road (indicating).

Q Yes. This is Lawton Road down here.

A That is what I know, sir.

Q Now show us.

A I went Lawton Road here in the Italian area.

Q Yes, it bounds the Italian area, but show us where you left the Road and went inside off the Road?

A Is this the way the road runs; comes around here?

Q That's right; Lawton Road.

A I don't remember no road coming around here (indicating). I remember the road coming around this way (indicating), and there being one come right down, angle across the side here over on this side (indicating).

Q Do you recall where the Italian Service Club was?

A Service Club?

Q Yes.

A I don't know.

Q Do you recall as you came down Lawton Road, do you recall a building off to your left some distance?

A I don't remember it being over there. I never paid any attention.

Q You don't remember a building being over there?

A No, sir. But I came in here, going right here by this tent (indicating). This is where I was standing (indicating).

Q You entered the Italian area in the vicinity of the Lawton Road end of barracks 709, is that correct?

A Right around here, sir (indicating).

Q All right. And as you went into the area between barracks 709 and the orderly room, 713, what did you see?

A At the time?

Q Yes; between 709 and 713.

A There was a group of men.

Q About how many, Sims?

A Sir, I couldn't exactly say.

Q Well, was there as many as a hundred, or were there more than a hundred?

A Probably may have been more than hundred.

Q Probably more than a hundred. Now, were there any lights inside barracks 709 when you first came in there?

A I don't remember seeing any lights in there, sir.

Q Were there any lights inside the tent?

A I don't remember seeing any lights in there, sir.

Q Were there lights inside the orderly room, 713, when you got there?

A There was lights in front of there and in there too.

Q There were lights inside?

A Yes, sir.

Q Could you see lights in this room, room Y?

A I could see the reflection of light through there.

Q You saw the reflection of light. In other words, what you could see was the light of room X reflecting through?

A The reflection of this room here into this room (indicating).

Defense: I think the Witness had indicated he could see the reflections of the lights out of room X into room Y.

Law Member: And out the window.

The Witness: Yes.

Defense: Yes, he would have to.

Q And could you see the reflection of light from room X into room Z?

A Of course, this door was closed (indicating).

Q That is door E?

A Yes, sir.

Q You couldn't see any reflection of light through the window?

A I don't remember seeing any reflection of light.

Q As far as you know there wasn't any light in room Z you could see?

A No, sir, I don't remember seeing any.

Q How about room R?

A Yes, sir, could see a reflection of light through this window here (indicating).

Q Through the window on the E door side of room R?

A Yes, sir. And also a light out here, sir (indicating).

Q Yes, over door A.

A Yes, sir.

Q About what position did you first take when you entered between building 709 and 713?

A I stood right by that tent.

Q You stood right by the tent?

A Yes, sir.

Q How far from the tent would you estimate that you were?

A Sir, I would say I may have been around maybe four or five feet.

Q Four or five feet from the tent. Well, I wonder if you want to go over on the map and point out to me just exactly where you were standing.

Law Member: The members of the bench down here claim when you are standing over here you can't see the points on the map that the Witness is pointing out.

Defense: I am sorry. Ask me in the future to move and I will do so.

Q Indicate approximately by the tent there where you were.

A I was standing right along in here, sir. (indicating)
About five feet off.

Q About right in here, you think, is that correct (indicating)?

A Yes.

Q I am going to write the letter "S" where you have indicated.

Trial Judge Advocate: I think, Major, he said a certain number of feet.

Defense: He said four - five feet from the tent.

A I don't know whether that far or that close. I know it wasn't any closer than that.

Q You mean four or five feet approximately?

A Yes.

President: Talk to the Court.

Trial Judge Advocate: He said again four or five feet and I don't think the members of the Court heard. Did you say four or five feet.

The Witness: Four or five feet. From the orderly room -- from the tent.

Q From the tent, you mean?

A Yes.

Q And that would be from this southwesterly corner of the tent?

A Yes, sir, southwesterly.

Q Was there a jeep in that vicinity at the time?

A Yes, sir, there was.

Q And was the jeep in front of you or behind you?

A The jeep was kind of to the side of me, sir.

Q Well, which way were you facing when you say it was at your side?

A I was facing the orderly room.

Q You were facing the orderly room?

A Yes.

Q And was the jeep on your left side or on your right side?

A Well, I disremember now what side it was on.

Q You don't remember which side, but you know it was on one side?

A On one side the way I was facing.

Q Were there quite a group of men standing around you at that time, Sims?

A No, sir, I don't remember no group being standing around me.

Q Were you all alone?

A I was standing there in that spot alone.

Q And there weren't quite a number of men in this area between 709 and 713?

A I seen a group of men standing here (indicating), but there wasn't anybody I seen standing over here (indicating).

Q You said you saw a group of men standing there. By that you mean in the vicinity of the window to room Y?

A Yes, sir.

Q And about how many men were in that group?

A Well, sir, I couldn't exactly tell.

Q Well, do you think there was ten, or was there twenty, or thirty?

A More than that. A large group of men.

Q More than thirty. Well, would you say there were more than fifty?

A I couldn't make no estimate.

Q I know you can't give it to us down to the exact number of men, but I want you to give the Court some idea approximately how many men there were. You say you thought there were more than thirty. Now would you think more than fifty?

A No, sir, I didn't tell you I thought it was more than thirty.

Q I thought that is what you said.

A No, sir.

Q Well, about how many do you think there were?

A It was exactly what I told you, I don't know. I couldn't estimate how many because it was a large group of men.

Q Was there as many in the group as the group that came down with you from barracks 719?

A I couldn't exactly tell you that, sir, because if I did tell you and say it was that many and I couldn't be positive, then what have I done, sir.

Q You haven't done anything. I am not asking you for any exact statement of how many there were; I am trying to get your best recollection.

A I don't know, sir.

Q Well, you have estimated that there were five in the first group that came down.

A Yes, sir.

Q Was the group you saw standing around in the vicinity of the window to room Y larger than that group?

A A large group, sir, would mean more than five.

Q A large group would mean more than five?

A Yes, sir.

Q Would it mean more than twenty?

A Well, twenty men would be a pretty large group.

Q You have estimated, as I recall, there were about twenty men in the group that you came down with from barracks 719?

A Did I tell you that, sir?

Q I think you did. Isn't that correct?

A I don't think it is.

Trial Judge Advocate: I think it was the first group he said that. I mean, the first group after the five, which would be in the second group; but there was still a third group that he was in.

Defense: I think you are correct, Counsel. I will stand corrected.

Q You estimated there was approximately twenty men in the second group that came down from your barracks to the Italian area, isn't that right?

Law Member: Fifteen to twenty, he said.

A Fifteen to twenty.

Defense: I think he said twenty once and the next time he said fifteen or twenty.

Q I am not trying to pin you down to the exact number, I don't think you know and I am not asking you to tell that, but didn't you say there were about fifteen to twenty men that came down with the second group from barracks 719 down to the Italian area?

A Yes, sir.

Q Now, was the group of persons that you saw standing in the vicinity of room Y of the orderly room about the same size as that group or was it larger?

A Sir, repeat that question.

Defense: (To Reporter) Read the question.

A No, sir, I want you to.

Q I can't remember it myself, if you want to know the truth about it.

(Question read by reporter.)

Q You understand that question, Sims?

A You mean the group, sir, that was standing around there, was that as large as that group what left from up at 719 and went down into the Italian area?

Q That's right. The second group that left from your barracks and went to the Italian area.

A Sir, they may or may not be as many because some of them were scattered out around.

Q The point we have marked "S" over here, about how long did you remain at that point?

A Sir, I stayed there until the M.P. come.

Q You stayed there until the M.P.'s arrived?

A Yes.

Q Now at the time you arrived there and went to the point marked "S" were there colored soldiers inside 713, if you know?

A During the time that I was there after all the groups of mens had left there, were down there, I see only two mens in the orderly room.

Q You could only see two men in the orderly room?

A Only two men I seen in the orderly room.

Q Let me ask you this. At the time that you arrived there at the point marked "S" could you hear yelling or shouting, or cries of pain, or anything inside the orderly room?

A No, sir, I couldn't hear nobody.

Q You couldn't hear anybody. Could you hear at the time you arrived there, could you hear a noise as if somebody was chopping?

A No, sir, I don't remember that.

Q You don't remember that. But during all the time you were at this point marked "S" there was a fairly large group that remained outside of the window of room Y here, wasn't there?

A Yes, sir, a large group of men.

Q And that large group of men remained outside that window of room Y until the time that the M.P.'s arrived?

A Sir, I disremember whether they remained there or not.

Q All right. Well, there was a large number of men around there like yourself that were just standing and watching what was going on, weren't there?

A Sir, I don't dispute that. There probably were.

Defense: I wonder if the Court will like to take a morning recess at this time?

Trial Judge Advocate: Why not go to 10:30 anyway.

Defense: It is agreeable with me. I thought this was a good time to break in.

Q You never did leave the place we have already marked "S" until the time or after the time the M.P.'s arrived?

A I don't remember leaving that place, sir, until the M.P.'s arrived.

Q Now, you testified yesterday that you saw Emanuel Ford. I want you to come over here and show us on this map where it was you saw Emanuel Ford.

A Emanuel Ford was here by this orderly room and this group of men which was shown up here (indicating).

Q Let's show it up on this map over here, Prosecution Exhibit 3. You point out with your finger where you saw Emanuel Ford.

A In this group of men right here (indicating).

Q All right. Point out approximately with reference to the window where you saw him?

A Did I say, sir, he was at the window?

Q No, you didn't. I am asking you where he was?

A I say, sir, he was in this group of men standing right along in this position (indicating).

Q Let's develop a few more facts, then, before you show me where he was. You also saw C. W. Spencer down there, did you?

A That's right, sir.

Q Now, did you see him in the same group around the window to room Y?

A Same group, sir.

Q Was Emanuel Ford to the right or to the left of C. W. Spencer when you saw him?

A I don't know that, sir.

Q You don't know that?

A I don't know that.

Q Weren't you there and looking at the group?

A I wasn't paying that strict attention to the group.

Q You weren't paying that strict attention to the group?

A No, sir.

Q By the way, how was Emanuel Ford dressed that night?

A I could not tell you.

Q You could not tell how he was dressed?

A No, sir, I could not.

Q Did he have any head gear on?

A I don't know that, sir.

Q You don't know that?

A No, sir, I don't know whether he did or not.

Q How was C. W. Spencer dressed?

A I couldn't tell you that.

Q Did he have any head gear on?

A I couldn't tell you, sir, whether he had any or not.

Q But you were down there, observed these men, stood there for some time watching them, and still you can't tell how they were dressed or whether they had a head gear on or not, is that right?

A I wasn't personally watching those men, sir.

Q They were in the group you were watching, weren't they?

A I was standing looking at the group, what they were doing, but I wasn't watching to see what kind of clothes they had on.

Q Now, Arthur Stone; how was he dressed?

A I tell you I couldn't tell you.

Q You couldn't tell me?
A I couldn't tell you how he was dressed.

Q And did Arthur Stone have any head gear on?
A I don't know, sir.

Q Did you say you saw Robert Sanders there that evening?
A That's right.

Q How was Robert Sanders dressed?
A I don't know how he was dressed.

Q Did he have any head gear on or not?
A I don't know whether he had any head gear on or not.

Q Where did you see Robert Sanders?
A I seen Robert Sanders, sir, in the jeep.

Q You saw him in a jeep?
A Yes, sir.

Q Was he alone in the jeep?
A When I seen him he was.

Q And you can't tell this Court after looking at Robert Sanders in a jeep whether he had any head gear on or not?
A I wasn't paying any attention.

Q You weren't paying any attention. Now, how was Richard Barber dressed?
A I don't know, sir, how he was dressed.

Q You don't know how Richard Barber was dressed?
A No, sir, I don't know how Richard Barber was dressed.

Q Did Richard Barber have any head gear on his head?
A I don't remember whether he did or not.

Q You don't remember whether he had or not?
A No, sir.

Q How was Roy Montgomery dressed?
A I don't remember, sir, how he was dressed.

Q You even paid more particular attention to Roy Montgomery, didn't you, when you said you saw him talking to a group of three white soldiers?
A Sir, I recognized him by his face, not by his clothes.

Q Did he have a head gear on?
A I don't remember him having no head gear on.

Q You looked at his face sufficiently that you think you recognized him but can't even remember whether he had a head gear on or not, is that right?
A Repeat that over.

Q Strike the question and I will ask it again. You can't even remember whether Roy Montgomery had a head gear on his head or not?

A I don't remember.

Q You understand what I mean by head gear -- any type of covering on the head?

A Yes, sir, I understand that.

Q Yes. Now you can't recall whether or not Roy Montgomery had anything on his head or not, is that right?

A I don't remember seeing anything on his head.

Q How about James Chandler; how was he dressed?

A I don't know, sir.

Q Did James Chandler have anything on his head?

A I wouldn't be positive of his having anything on his head. I think he did.

Q What do you think he had on his head?

A A fatigue cap, sir, I think. I ain't positive. That is just I think.

Q What did Luther Larkin -- how was he dressed when you saw him that evening?

A I don't know, sir.

Q Did Luther Larkin have anything on his head?

A I don't remember, sir, whether he did or not.

Q How about Arthur Hurks; how was he dressed that evening?

A That evening?

Q The night that you are talking about here.

A Sir, I don't remember what he had on that evening.

Q Was Arthur Hurks wearing anything on his head?

A I don't remember.

Q How about Booker Thornton; how was he dressed?

A I don't remember how he was dressed.

Q As a matter of fact, you don't remember how many men were dressed?

A I don't remember just personally how any of them were dressed, because I don't know how I was dressed myself, my own self. I am not positive of it.

Defense: I don't think I have any further questions.

Trial Judge Advocate: Does the Court wish to proceed?

President: Yes.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Private Sims, where were you born?

A Corrigan, Texas.

Q Corrigan, Texas?

A Yes, sir.

Q And were you raised in town or out on the farm, or where?

A Out on the farm, sir.

Q And what type of work did you do the greater part of your life?

A Farm, sir.

Q Farmed?

A Yes, sir.

Q Where did you farm?

A In Austin County, sir.

Q Austin County?

A Yes, sir.

Q Is that where Corrigan is located?

A Yes, sir.

Q And how long ago was it when you left the farm?

A 1937, sir.

Q 1937?

A Yes, sir.

Q After that, generally what type of work did you do? Not in great detail, but what was the general nature of your work after that?

A Sir, I was digging foundations for houses.

Q Foundations for houses, you say?

A Yes, sir.

Q All right. Now when Major Beeks interviewed you, the interview that he referred to that he had with you, who all was present?

A Sir, you mean up there to Major Manchester's office?

Q Yes, sir, wherever he talked to you. Who was present?

A This man here, sir (indicating).

Q And who else?

A And there was a lady.

Q And Major Beeks?

A Yes, sir, and Major Beeks.

Defense: The "man here" he refers to is Captain Noyd,

Q And Major Manchester wasn't present?

A No, sir; I don't remember seeing him there.

Q You mentioned in answer to Major Beeks' questions that one of the five men of the first group that you saw walked down to the area, that one of them broke a light, did you say -- was that the testimony -- at one of the barracks?

A Yes, sir.

Q Now who was the man?

A William G. Jones, sir.

Q William G. Jones. Was that the man you pointed out to the court yesterday?

A Yes, sir.

Q One of the accused?

A Yes, sir.

Q I believe you answered one of Major Beek's questions by stating that you recognized the accused Arthur Stone by his clothes -- I mean by his face and not by his clothes. Was Arthur Stone one of the accused you identified yesterday in the courtroom?

A Yes, sir.

Defense: I think the record speaks for itself and this is improper rebuttal.

Trial Judge Advocate: I am merely trying to see if that is the same man that he had reference to. You spoke of Arthur Stone and I want to tie him in as being one of the accused.

Defense: Counsel is only trying to give reemphasis to testimony already in, and it is not proper and is prejudicial.

Law Member: All you want, Colonel, was that the man mentioned this morning was the same Stone as mentioned yesterday?

Trial Judge Advocate: That's right.

Law Member: (To Witness) Is that correct?

The Witness: Yes, sir.

Defense: As far as I know there is only one Stone mentioned in all the proceedings.

Trial Judge Advocate: As far as the court knows there may be another Stone and I was merely trying to tie it in with the accused; that is all.

Law Member: I want to ask one or two questions.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Sims, you mentioned Loary Moore?

A Yes, sir.

Q Where was he standing when you saw him?

A Sir, he was down there in the group of men, but not exactly in the bunch, that were standing around the orderly room window.

Q And is that the window which went into room Y?

A Yes, sir, that is the window that went in there.

Q Did you testify how many men were in the group that went down with you?

A Yes, sir, I did.

Q How many men were in that group?

A I would say, estimate, as I said yesterday, it would be as many as fifteen or twenty mens.

Q Was that in your group or was that in the second group?

A That was in my group, sir.

Q So there were about five in the first group, is that right?

A Yes, sir.

Q Fifteen to twenty in the second group?

A Yes, sir.

Q Fifteen to twenty in the third group?

A Yes, sir.

Law Member: That is all.

Questions by President:

Q You testified that you saw the accused William G. Jones breaking a light in building 708?

A Yes, sir.

Q Was that light burning when he broke it?

A Yes, sir.

Q How far were you from Jones when the light was broken?

A Sir, I was just approximately, estimating on it, it would be about maybe 175 feet or something like that.

Q 175 feet?

A Yes, just about 175 feet.

Q Were you on your way down to the area at that time?

A Yes, sir, I was on my way into the area at that time.

Q That is when you saw the light broken?

A Yes, sir.

Q About how long elapsed between the time of the first group, that you said was led by Jones, and the second group, which you testified Larkin led -- how long elapsed between those two groups?

A Sir, it wasn't long. I would say not more than three minutes. sir.

Q And how long between the second group led by Larkin and the last group that you went in, the third group which you went in?

A It wasn't much more than that I don't think.

Q About the same length of time?

A About the same length of time, sir.

Q Did you see any other groups forming to go down there either before or after that time?

A No, sir. I didn't see any other group form when we was going down in there, but after we was coming out I seen a group of men formed up over there in the company 578 -- in front of one of those barracks there.

Q Had they gone into the area?

A I don't remember seeing any of them going in there, sir.

President: Are there any further questions?

Questions by Captain Atkinson:

Q What time did you get back to your barracks after the M.P.'s came?

A Sir, I don't know exactly what time it was because I didn't have any watch.

Q Was it real late or did you go right back to your barracks then?

A I went right back to my barracks when he come down there and told us all to leave out.

Questions by President:

Q You came right back to your barracks with all the rest of the men?

A Yes, sir.

Questions by Captain Atkinson:

Q You went all back in a group, all went back to the barracks together?

A Yes, scattered all over.

Q Did the M.P.'s order you to go back or force you all to go back?

A I didn't hear him, sir, tell any of them to go back, but I heard one of the noncoms say, "Here's the M.P.'s; let's go". Well, we went on back and the M.P.'s come on back up to the barracks with us.

Captain Atkinson: That is all.

Questions by Lt. Colonel Stecher:

Q Where were you when you say you saw William G. Jones break that light? Just where were you at that time?

A I was on my way down into the area, sir.

Q Were you still on the road or off the road?

A No, sir, I was still on the road.

Q All right. You know where 708 is on that map?

A Yes, sir.

Q Can you show me about where you were when this light was knocked off?

A Yes, sir, I can.

Q All right. Can you show me, please, and just point out about where you were?

A I was right along in here, sir (indicating).

President: That point is due west of building 700 and on Lawton Road just east of this junction with Wyoming Avenue.

Defense: That's right.

Lt. Col. Stecher: I was just confirming the 175 feet; if he understood just what that meant.

Q How did you know it was Jones, Sims?

A Sir, I knowed him by his face. The light was burning when he jumped up on the little step. A platform on the porch came out in back and he jumped up on that and hit the light.

Q The light was shining on his face?

A The light was shining on his face.

Q You were almost 60 yards away, you know?

A Sir, that's right.

President: Any further questions?

Defense: Yes, I would like to ask one, if the court please.

RECROSS-EXAMINATION

Questions by Defense:

Q Sims, when Jones jumped up at this light, as you say he did,

was he running before he jumped?

A I disremember, sir, whether he was running or not. I wouldn't be positive of that.

Q Well, how did he come up onto that little porch from the road; from which direction?

A He come in this direction; the little porch sticks out here (indicating).

Q In front of 708?

A Yes, sir.

Q On the Lawton Road side?

A Yes. He come in across this way (indicating).

Q He come down Lawton Road in the vicinity of building 700, towards barracks 708?

A Yes, sir.

Q Now, do you want the Court to understand he came up there and completely turned around on that porch before breaking the light?

A I didn't say the man turned, sir.

Defense: That is all.

President: Any further questions?

Trial Judge Advocate: There is one I would like to ask the Witness. Just one and that will be all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Private Sims, will you stand up a minute and turn around, please. From where you are standing -- stand right up against here -- estimate the distance to that door.

A Well, sir, I would estimate it would be right close to around twenty-four feet.

Q Twenty-four?

A Yes, sir.

Q Now estimate the distance from here to here (indicating). Just turn around, will you. Stand right here at the edge of this table and estimate the distance to that wall, will you.

A Sir, I would say about twenty, eighteen to twenty feet.

Q You would say that as eighteen or twenty feet, and the other, you say, that is twenty-four feet. Now, will you back up to the corner of this table and estimate, now -- I don't mean by that for you to stand and try to do anything other than estimate it; we are merely trying to get your estimates of distance -- will you stand here at the corner of this table and estimate the distance from the corner of this desk to this reporter's table.

Defense: Of course, if the court please, I am going to object to this line of testimony. It becomes clear. I move to strike the answer on the grounds that Counsel is trying to clearly impeach the testimony of his own witness.

Law Member: Objection overruled.

Defense: It can't have any other purpose, if the Court please.

Law Member: No, it has another purpose. It is this man's ability to estimate. It isn't impeaching at all. Continue.

Q All right, estimate that distance now from the corner of this desk, just from where you are standing, to this reporter's table. How many feet would you say that is?

A Sir, I would say that would be about six feet.

Q About six feet?

A Yes, sir.

Trial Judge Advocate: I believe that is all.

Law Member: All right. I would like to have the Counsel stipulate the actual measurements.

Defense: If somebody will measure them I will agree to stipulate. You can pace it off and I will agree it is so many paces.

President: Let's measure it during the recess and stipulate when you come back in.

Defense: That is all right.

President: Any further questions?

Trial Judge Advocate: No further questions.

President: The Witness is excused.

There being no further questions, the Witness was excused and withdrew.

President: We will take a recess for fifteen minutes and reconvene at 11:00.

The Court thereupon recessed at 10:45 a.m. and reconvened at 11:00 a.m., 22 November 1944

President: Is the prosecution ready?

Trial Judge Advocate: Yes, sir.

President: Is the defense ready?

Defense: Yes, sir.

President: The Court will come to order.

A rollcall of the accused was then conducted by the Assistant Trial Judge Advocate. All of the accused were present.

Trial Judge Advocate: Let the record show that each of the accused is present, and all the members of the Court, personnel representing the accused and the personnel of the Prosecution are present.

The interpreter and reporter were also present.

Trial Judge Advocate: Actual measurements were made of the distances during the recess. The first distance that the witness estimated as 24 feet, the witness Jesse Sims, was, 35.25 feet; the distance estimated as eighteen to twenty feet was 24.16 feet; the distance estimated as 6 feet was 8 feet 11 inches. That is stipulated, as I understand it.

Defense: Yes, I am offering no objection to it. I didn't measure it, but if Counsel says that is what the measurement is, it satisfies me.

Assistant Trial Judge Advocate: It was measured with your rule.

Defense: That rule is one inch short.

Assistant Trial Judge Advocate: I took that into consideration.

Trial Judge Advocate: Is it agreeable; you so stipulate?

Defense: Yes.

Trial Judge Advocate: I next want to offer in evidence a grant of immunity as offered heretofore.

Assistant Defense: Dated the 6th of November?

Trial Judge Advocate: Yes.

Law Member: The letter of immunity is received in evidence without objection as Exhibit No. 20.

The letter of immunity to Jesse C. B. Sims was marked Prosecution Exhibit 20 and received in evidence.

The Trial Judge Advocate then read Prosecution Exhibit 20 to the Court.

Sergeant Major Augusto Todde, 28th Italian Quartermaster Service Company, a witness for the Prosecution, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your full name.

A Augusto Todde.

Defense: If the Court please, before proceeding further I think there should be some indication in the record, as well as for the information of the Court, that this Witness does not speak English.

Trial Judge Advocate: All right, we will just ask him. Would you mind my at least having him identified with his tank, grade and organization and so on?

Defense: All right.

Q What is your grade?

A Sergeant Major.

Q And your organization?

A 28th Italian Quartermaster Service Company.

Q And your station?

A Mt. Rainier.

Law Member: What is that?

Trial Judge Advocate: Mt. Rainier.

Q You mean by that the Mt. Rainier Ordnance Depot?

Defense: I will stipulate that with you, Counsel.

Trial Judge Advocate: All right.

Q Do you speak the English language?

A I do not speak the English language. I understand a little.

Trial Judge Advocate: That is satisfactory, Counsel?

Defense: Oh, I don't think I need to indicate, Counsel, whether I am satisfied or not. I thought there should be something in the record. Something may develop which I may not be satisfied with. I thought at least before you proceeded through the interpreter there should be some preliminary showing the man doesn't speak the English language.

Trial Judge Advocate: Is it desired any further predicate be laid? If not, I will proceed. If it is desired any further predicate be laid I will be glad to do it.

Defense: I am not asking for anything more at this time.

Trial Judge Advocate: All right, fine.

Q Where were you stationed on the night of August 14, 1944?

A In the area of the 28th Italian Quartermaster Service

Company.

Q Where?

A I was in my barracks. Exactly, in barracks 709.

Q And at what station?

A Fort Lawton.

Q Washington?

A Yes, sir.

Q How long were you in the Italian Army?

A In the Italian Army I was a member of it first for seven years; then again for four years.

Q What was the nature of your assignment while a member of the Italian Army?

A Services of radio. (Interpreter : Signal Corps, I imagine.) Radio Intelligence.

Q Radio Intelligence?

A Yes, sir.

Q How long were you actively engaged in following radio intelligence work?

A All the period during which I was a soldier in Italy; also during the time I was a civilian.

Q Did you ever live in Tripoli?

A I have always lived in Tripoli since the year 1927.

Q Did you or not during those years have occasion to see Ethiopians?

A No.

Q All right. Did you at any time have occasion to see Ethiopians?

A I have never seen Ethiopia.

Trial Judge Advocate: (To Interpreter) Are you asking him if he saw Ethiopians or if he saw Ethiopia?

Interpreter: Ethiopia.

Trial Judge Advocate: Well, the question was Ethiopians.

A Yes.

Q Well, tell us where you saw Ethiopians and what your experience in seeing them was.

Defense: Just a moment before the question is put. It is not clear to me, if the Court please, how long this man had been in Tripoli. I think it affects very materially the testimony which is to come now. He said he had been in Tripoli since 1927. I think Counsel should bring out more clearly.

before proceeding with this other line of examination if that includes the civilian part of his life before he went into the Army; whether it includes all of his career in the Army.

Law Member: Isn't that a matter of cross-examination by you?

Defense: I think I have a right to object to certain parts of this line of examination that he is coming to without him establishing that proper background. I was trying to save myself and the Court the trouble of being continuously objecting, if Counsel will bring that out preliminarily at this time.

Law Member: Well, on what grounds are you objecting?

Defense: Well, my objection, if it please the Court, may be slightly premature, but it is quite clear at this time that Counsel is going to show or endeavor to show that this man has had frequent associations with colored people. Now it isn't fair to the Court for the Court to think that has happened since 1927 up until the date that he was taken prisoner, if that wasn't the fact. When these further questions are asked I will object to them on the grounds the proper foundation for his associations have not been laid.

Trial Judge Advocate: May I suggest, if it please the Court, if Counsel will wait a minute or two I am sure he will be entirely satisfied with the questions that we ask and the predicate laid. I can't ask all my questions at one time. I propose to go into the matter very thoroughly, very fully.

Law Member: The objection is overruled.

Trial Judge Advocate: (To Reporter) Now let's see what that question was, Mr. Rasmusses, that was asked prior to the time these objections were made.

(Question read by reporter.)

Q All right. Will you answer that question?

A I have seen them in Tripoli; exactly, in Libya.

Q During what years?

A During the years 1928, 1929 and 1930.

Q And what was the nature of those contacts with Ethiopians during those years?

A In that period, exactly, on the reoccupation of Libya I was assigned with a company of Ethiopians and Libians, and in that period I had occasion to be together with these colored people.

Q Now, getting back to the night of August 14, you have testified that you were in barracks 709. Was there anything of an unusual nature that occurred while you were in your barracks 709?

A No. You want to know the whole affair?

Q No. I want him first to tell me if he heard anything or saw anything of an unusual nature that night?

A That night I did not hear anything.

Q All right. Do you recall the incident at Fort Lawton when some Negro soldiers were in the Italian area?

A I remember very well.

Q When was that?

A The night of August 14, 1944.

Q Where were you when you first learned that the Negro soldiers were in the Italian area?

A I was in my barracks, 709.

Q What happened that first called your attention to this incident?

A It was a Private Bertoli who approached me at my bunk and advised me that there was something strange occurring.

Q What, if anything, did you do when you were so advised?

A At that moment I heard that there were shouts, in the vicinity of, coming from, that section of the mess hall, that part of the mess hall, from where I knew that there were Negroes. Bertoli could not tell me exactly what was happening; therefore, I got up. I told the soldiers to remain there; that I would go out to see; in fact, the fact which I did go. Arriving at the point where barracks 708 was, one of our soldiers grabbed me by the arm --

Q All right, just a moment. State the name of that soldier?

A Manca.

Q Then what happened, if anything?

A He told me not to go there because there were more than 100 American soldiers armed with clubs and knives. I asked him what was happening --

Defense: Just a moment. It may be understood, I assume, if the Court please, our objection runs to all these conversations the same as I made yesterday. No showing here it is part of the res gestae.

Law Member: Objection overruled.

A -- (continuing) but Manca could not explain to me what was actually happening.

Q So then what, if anything, did you do?

A At that point I heard a scream from one of our boys who was calling "Help".

Q Do you know who it was that was calling "Help"?

A I knew that it is Correa, but at that moment I could not identify him.

Q How do you know it was Correa?

A After I knew.

Q Well, how did you know after?

A From the story that he told me.

Law Member: That will be stricken out.

Trial Judge Advocate: Yes, that will be stricken. I agree to that. That part of it, now, so the record maybe plain, where he said the scream he heard was from Correa may be stricken because he learned that from Correa.

Q All right. After you heard this scream, what, if anything did you do?

A I saw that this soldier was being chased by five or six men, soldiers.

Q Now, just a minute there. He said they were being chased by five or six soldiers. Could he tell whether or not they were Negro or white soldiers?

A No, because there was a certain distance between the point where I was standing and the point where I saw these men running.

Q All right. After you saw these men running what, if anything, occurred next?

A Exactly at the point where I was standing, I was standing close to barracks 708, there arrived a bunch of stones, many stones, some of which came close to me. I reentered my barracks, attempting to protect myself from these stones. I entered my barracks from the same side that I exited. I told the boys to remain where they were, without moving, and if possible to barricade the doors; that I would go to make a telephone call.

Q All right. After you said that did you go to make a telephone call?

A I went into the tent where I knew Staff Sergeant Perata was sleeping, who is the Company Interpreter.

Q Now, just before we proceed from that. The stones that you mentioned, what were they thrown against?

A I don't know. They arrived against my barracks and towards where I was standing. I don't know to whom. The barracks 708 and towards to where I was standing. I don't know at exactly what they were directed.

Q Were or not any windows broken at that time?

A I could not see.

Q He could not see or say?

A See.

Q All right. When you arrived at the tent where Sergeant Perata

was, what, if anything, did you do?

A I called out to Perata, but a reply came from Pfc. Gould.

Q Who is Pfc. Gould?

A He is an American soldier who was part of our company at that time.

Q And who is Sergeant Perata?

A Staff Sergeant Perata is an interpreter who was attached to our company, 28th Italian Quartermaster Service Company.

Q After the reply came from Private First Class Gould, what, if anything, did you do?

A Gould told me that Perata was already at the telephone, and he also asked me what was happening. I replied that I did not know.

Defense: Now, if it please the Court, I object. A lot of these conversations were a result of questions, and where an explanation is made by a witness or anyone else present at the scene in response to a question it is clearly not part of the res gestae.

Law Member: All he said, he was at the telephone. It was in the record already.

Defense: That is one reason I objected that there was no proper foundation or showing made some of these statements were part of the res gestae. It is well recognized if it is in response to a question asked it is not part of the res gestae.

Law Member: It is in the record rocks were arriving from some place and going some other place, which indicates to the Court that the affair was on. Isn't that a fair assumption?

Defense: Well, I am attempting to make these objections not only for the protection of the accused but also for the protection of the record, and for the information of the Court, but if the Court wants to overrule it I will stand on the record in regards to them.

Law Member: Now, what particular conversation do you now object to?

Defense: I am objecting and I move to strike the answers of all these witnesses given where it appears that the information was either given by the other witness he is talking about or himself, or in response to questions asked by either one or the other.

Law Member: Your motion is denied. Now, do you make a specific objection at the present time to any conversation -- this last question and answer?

Defense: Well, I move to strike the answer, if the Court please.

Law Member: You mean that you want to strike the answer out that Gould replied to the witness that Perata was already at the telephone?

Defense: I don't think any of these conversations that took place that were in response to questions, given in response to questions by someone and that were not spontaneous exclamations, are admissible before this Court.

Law Member: I have already denied the motion to strike out.

Defense: Well, there is nothing before the Court then, I assume.

Q All right, now, let's see. (To reporter) Did he answer the last question?

(Answer read by reporter.)

Q All right. Now, after that did you or not go into the orderly room?

A Yes, sir.

Q Come with me, please, and let's look at this map, which is Prosecution Exhibit No. 2. Now let's stand in such a way each member of the Court can see. Now, this map has been agreed to, and this is Lawton Road running into the Italian area, and this is barracks 708, the barracks you say you lived in; here is barracks 709; and here is a tent, and this is a tent, and this is the orderly room, 713 (indicating). Now, which tent did you enter? Which tent did you enter when you talked with Pfc. Gould?

A (Witness indicates)

Trial Judge Advocate: May it be agreed he pointed to the tent which lies between barracks 709 and the orderly room?

Defense: I am sorry, Counsel. I am afraid I was dreaming at the time.

Trial Judge Advocate: I am sorry I interrupted your dream.

Defense: It wasn't a very pleasant one, so it is quite all right.

Trial Judge Advocate: This is the tent he pointed to (Indicating); between the orderly room, 713, and barracks 709.

Defense: I will so stipulate, yes.

Q Now at which point of this tent did you enter; in other words, where was the entrance to the tent?

A He is pointing that the door was right here (Indicating); he is pointing to the door. The back of the tent, he says, was pointing towards 709.

Q And the entrance was where?

A At this point (Indicating).

Q That is a corner between another tent and the corner of the orderly room.

President: He said that is where the entrance is?

Trial Judge Advocate: That is correct. Northwestern corner of the tent.

Q All right. Now were there any motor vehicles parked anywhere close to the tent that you have been pointing to?

A There was a company jeep.

Q Any other motor vehicles parked anywhere in that vicinity?

A There was a private automobile of Sergeant Farr.

Q A private automobile belonging to Sergeant Farr. All right, when you entered the orderly room which way did you go in? Now, this is Prosecution Exhibit 3, which gives a floor plan of the orderly room. Door A is one entrance; door E is another entrance. Now which entrance did you go in?

A Door A (Indicating) .

Q Who, if anyone, was in the orderly room when you entered it?

A There was Sergeant Farr who was telephoning.

Q Anyone else?

A And Staff Sergeant Perata; there was Corporal Haskell; there were two or three of ours.

Q What does he mean "of ours"?

A Soldiers of my company.

Q Did or not any more Italian soldiers enter the orderly room after you entered it?

A Yes, sir.

Q About how many more?

A About ten.

Q Can you name some of them?

A Some, yes.

Q Will you do so?

A Pisciotano.

Q P-i-s-c-i-o-t-t-a-n-o?

A Ferrante.

Q Ferrante. That has been spelled.

A Bertoli.

Q The next one?

A Captain Cellentani, Sergeant Major Sarcina, and Sergeant Marcelli.

Law Member: Any others?

The Witness: After Sergeant Marcelli, no one else entered.

Q Do you know an Italian soldier by the name of Furlanelli?
A Yes, sir.

Q Was he or not in that orderly room that night?
A Yes. I found him when I entered; he was before me.

Q Well, give me --

Law Member: What is that spelling?

Trial Judge Advocate: F-u-r-l-a-n-e-l-l-i.

Q You say Furlanelli was in there before you entered. Now what other Italian soldiers were in the orderly room before you entered?
A I do not remember because my attention was focused on the one who was telephoning.

Q All right. Now after you entered the orderly room what, if anything, happened?
A After I entered the orderly every one was asking me what was happening, both those who were already in there and also those who were coming in afterwards.

Q Did anything happen while he was in the orderly room -- while you were in the orderly room?
A Yes, sir.

Q What was it?
A After Sergeant Marcelli entered, which I have said entered last, some of the American soldiers were at this door, at this entrance (Indicating).

Q That is door A?
A Door A.

Q Now, were they white or Negro soldiers?
A They were Negro soldiers.

Q All right. About how many entered through door A?
A No, they did not enter from there. The moment I saw that they were colored soldiers I heard the arrival of stones on top of the orderly room. I understood that the thing could be serious and I wanted to bar that door; in fact, I closed it. I called the boys who were inside to help me, I grabbed the tables and the chairs, but Corporal Haskell told me no, to leave them alone. I adhered to what Haskell said. I went into that room (Indicating).

Q Wait a minute. Room Z.

Defense: Counsel, you didn't identify the door he was talking about a moment ago.

Trial Judge Advocate: I will have to go back to it. That is the reason I haven't yet and have let them go.

Q Room Z.

A And I came near that window (Indicating).

Q The window of Room Z.

A At this area there was practically no one (Indicating).

Q That is in the area around door E.

A At that moment.

Q All right. Let's stop here. Let's go back to door A. You testified that you saw some negro soldiers here in front of door A. Did or not those Negro Soldiers enter door A at that time?

A Much later.

Q Much later. What were they doing in front of door A when you saw them the first time?

A Nothing. They were just looking in, but there was just a few. This happened as soon as I entered the orderly room.

Q About how many would you say there were in front of door A at that time?

A Three or four.

Q Was the door between room X and room R -- the door that is designated as D -- was that door closed at any time?

A That door remained closed from the time I closed it until the time that it was forced open -- that I saw it.

Q How was it forced open?

A When this door was forced, in the point where he is pointing to --

Q Wait a minute. (To interpreter) That isn't responsive. I asked him in what manner was that door forced. I don't believe he understood the question.

A It was forcefully opened.

Q How?

A With a blow of an ax.

Q Did he see the ax?

A No. I saw the hole it made in the door.

Q Could he see any part of the ax?

A I saw the break the ax made in the panel of the door.

Q All right. Was the door broken down or did it remain closed?

A The door was opened. It wasn't thrown to the ground, broken down.

Q Well, tell him to explain that; just how that happened.
A We heard the loud bangs on the door. It could have been bricks or stones, or it could have been clubs. Therefore, I called Pisciotano and Furlanelli, and another one which I don't recall who he was, and I braced them there to hold the door; in fact, we did hold the door until such time as this ax penetrated one of the panels. I saw that the door was about to be opened. These Italian soldiers that were here left the door and then the door was opened.

Q Then after the door was opened in the manner you have just described what, if anything, happened?
A Staff Sergeant Perata came immediately near the door (Indicating).

Q Door D?
A I was in this position (Indicating).

Q You pointed to in front of door B.
A Because I was watching this door and across here at this door (pointing).

Q (To interpreter) Now, will you instruct him whenever he points to a place and sees the letters to call out the letters.

Defense: You can indicate in the record, if you want to, Colonel. I have no objection.

A Yes, sir.

Q All right. Then what, if anything, happened next?
A Perata raised his hands and said in substance, "I am an American soldier; stop", after which I could not understand the rest.

Q What, if anything, happened in response to that statement of Sergeant Perata's?
A They replied something which I could not understand. Immediately after I saw Perata thrown to the ground.

Q Thrown to the ground.

Interpreter: No, falling to the ground. I beg your pardon.

Q After you saw Staff Sergeant Perata fall to the ground, Well, tell us this. Do you know or did you see what happened that caused him to fall to the ground?
A I saw that he was hit on the head.

Q What was he hit on the head with?
A I did not see.

Q All right. After he fell to the floor, what, if anything, happened next?

A Those that hit him, those that were in a position between door D and door A, they retired slightly. Immediately after that, door E was opened.

Q Who, if anyone, came through door E?

A From door E there entered an American soldier, a mulatto, He came through the doorway of door E.

Q Now suppose you step over there where the accused are seated and see if you see anyone there among their number who you can identify as being the one who came through door E.

A (Witness inspects accused sitting in the court room.) No, sir.

Q Now after this man entered door E what, if anything, happened after that? Did he come in himself or others follow him?

A He came in alone.

Q Did he stop in the doorway or did he proceed on?

A He came towards the direction of door B.

Trial Judge Advocate: Does the Court want to adjourn at this time?

President: The Court will recess and reconvene at 1:30 p.m.

The Court recessed at 12:00 noon, and reconvened at 1:30 p.m., 22 November 1944.

President: Is the Prosecution ready?

Trial Judge Advocate: Yes, the Prosecution is ready, if it please the Court.

President: Is the Defense ready?

Defense: Yes, sir.

President: The Court will come to order.

The Assistant Trial Judge Advocate then called the roll of the accused, who were seated in the court room, all of whom were present.

Trial Judge Advocate: Let the record show that each of the accused is present, that the members of the Court are all present, the personnel representing the accused and the personnel of the Prosecution.

The interpreter and reporter were also present.

Defense: If the Court please, a matter came up shortly before the recess between counsel for the prosecution and myself. I would like the opportunity of conferring with the accused in private for a few minutes, and I would appreciate

the Court asking the Court to be cleared. This is the only place around here I know of that I may confer with the accused in private.

President: In view of the fact this is the only room that the Counsel may use during the course of the trial to confer with his clients, the Court will take a brief recess. The Court room will be cleared except for the Defense Counsel, assistant Defense counsel and the accused, and the Court will reconvene when Defense counsel is ready.

Defense: I would like to say this too, if the Court please. I would like the M.P.'s excused from the room. It may be after the Court is cleared I will excuse some of the accused. I will notify the M.P.'s outside the door in the event I do and they can take them in their custody.

The Court room was then cleared of all except the accused and their Defense counsel at 1:32 p.m., and the Court again reconvened at 2:00 p.m., 22 November 1944.

President: Is the Prosecution ready?

Trial Judge Advocate: Yes, sir.

President: Is the Defense ready?

Defense: Yes, sir, if the Court please.

President: The Court will come to order.

Trial Judge Advocate: So the record will show, each of the accused is present as well as the members of the Court, the personnel of the Defense and personnel of the Prosecution.

The interpreter and reporter were also present.

Sergeant Major Augusto Todde, 28th Italian Quartermaster Service Company, a witness for the Prosecution, again took the witness stand and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant Todde, at the recess you had told the Court about a colored soldier who had come through door E and had walked to door B. Did you observe the movements of this colored soldier after he came through door B?

A Yes, sir.

Q What was it that he did?

A He was talking with Farr.

Q Talking with Sergeant Farr. Could you understand any of the conversation?

A I understood some.

Q Please tell the Court what you understood?

A Farr was telling this mulatto, "I am an American soldier; this is an American soldier," indicating Haskell, pointing to Haskell. He indicate^d Staff Sergeant Perata who was sitting on the floor with the blood over his face, stating that that is an American soldier. This mulatto was telling the Negroes who were standing in door E, "Take it easy; just a minute."

Q All right. After that conversation transpired, what, if anything, happened?

A I told this mulatto, "I am an American soldier". "You shut up," he said to me.

Q Was it Sergeant Todde, the witness; did you say to him, "I am an American soldier"?

A Yes, sir.

Q And he said what?

A You shut up; get out.

Q What, if anything, happened next?

A After certain minutes those that were standing still in door E were talking to this mulatto, but I could not understand what they were saying.

Q All right. While you were in the orderly room was or not anything thrown at you at any time?

A At that moment a brick, rather, a stone, arrived from the corridor made by door A and door D.

Q Did or not this stone come in your direction?

A This stone came in my direction because I saw it from the minute that it was thrown.

Q Did it hit you?

A No. I ducked it. Most probably it would have hit me if I had not ducked it.

Q After you ducked did you see whether or not it hit anyone else?

A This stone hit Furlanelli.

Q And on what part of Furlanelli's body did it strike?

A I saw him hit around here (indicating); probably in his eye.

Law Member: He points to the left side of his face. Is that satisfactory, Major?

Defense: Yes, sir.

Q Did you or not observe whether or not Furlanelli was bleeding any after that?

- A I did not observe this because Furlanelli went in this direction (indicating) and I was observing this direction and this direction (indicating).
- Q You stated you saw Corporal Haskell in the orderly room. Did you at any time observe whether or not a negro soldier was attempting to strike Corporal Haskell?
- A Yes.
- Q Now, Sergeant Todde, please tell the Court what you observed with respect to that?
- A When this stone had been thrown, the men who were standing in the corridor that is made between door A and door D, all of them entered the room, the room X. The first of these American Negro soldiers, who were proceeding the bunch here (indicating), was armed with a club.
- Q Preceding the bunch here. You pointed from where to where?
- A Preceding the bunch here. (indicating).
- Q Well, that is room R; through the doorway?
- A By the corridor I mean the space from A to D. On this side there are benches and desks (indicating), and that is what makes the corridor in here. Those are the men that entered into room --.
- Q Did or not any of those men strike Corporal Haskell?
- A No, he was attempting to strike Haskell. I was in back of Haskell. I pushed Haskell with my shoulder on the small of his back. Haskell made a turn like this (illustrating).
- Q In door B?
- A Yes, sir.
- Q In doorway B. All right. Why did you push Corporal Haskell?
- A Because they would have certainly struck him.
- Q What did you see that indicated to you that they would certainly have struck him?
- A There was this one that was advancing this way with a club, running.
- Q By this way, what do you mean?
- A Holding the club in his hand in this manner; therefore, when reaching Haskell, he would have hit him certainly.
- Q Now you say holding the club in this manner. Was he holding the club by his side or was he holding it overhead?
- A Raised in this manner and ready to strike (indicating), or in an act of striking.
- Q All right. Now, I want you to come with me and look over, carefully, the accused, and tell me whether or not you see any in their number whom you saw in the orderly room on the night in question. (To interpreter) Would you tell him any of them he saw in the orderly room on the night in question.

A Those that also were in door D and in door E?

Q Any of them he saw anywhere in the orderly room and then we will find out from him where he saw them.

A (Witness makes an inspection of the accused seated in the court room.)

Q Tell him to point.

A (Witness points.)

Q Come with me. Is that the man?

A Yes, sir.

Trial Judge Advocate: I will ask the Court to ascertain the accused's name whom the witness pointed to.

Law Member: Will the man in the back row on the far end stand up and give his name?

The individual whom the witness indicated then arose and announced his name, as follows: Private Jefferson D Green.

Trial Judge Advocate: Did the Court get that? Jefferson D. Green is what he said.

Q Now, where did you see Private Jefferson D. Green on the occasion in question?

A This soldier was standing still in doorway E.

Law Member: Standing still?

Trial Judge Advocate: Standing still in doorway E.

A That is the door where the American soldiers were, E.

Q Was any other Negro soldiers with the one you have just identified?

A Yes, sir.

Q Will you look over the accused and see if you see among their number any other soldier who was with him.

A (Witness inspects accused seated in the court room.) The fifth man in the last row.

Q Come with me.

A (Witness points to one of the accused.)

Trial Judge Advocate: I am going to ask the Court to ascertain this accused's name.

Law Member: Will the fifth accused in the back row please stand up?

The individual indicated by the witness then arose and announced his name, as follows: Technician Fifth Grade Willie Prevost, Sr.

Q Well, let's get the fact about these two whom you have identified before we proceed further. Now, tell the Court, please, where these two men were standing when you first saw them?

A They were standing still in front of door E.

Q Did you receive any injuries that night?

A Yes, sir.

Q Tell the Court what injuries you received.

A I received a wound on my forehead on this part (indicating), and another here (indicating).

Law Member: Where does he point to?

Q The one that he pointed to last, ask him where that is.

Not to point but to describe where it is.

A On the right side of the forehead.

Q And the other one?

A Here behind; on the right side (indicating).

Q Behind your right ear?

A Behind the right ear, yes, sir.

Q Is a scar or any other mark still visible from either of the two wounds you received?

A Yes, sir.

Q Which one?

A This one on the forehead.

Q Walk with me.

A (Witness exhibits scar to members of the Court and Defense Counsel.)

Q Now, I wish you would tell the Court and describe in detail how you received those wounds?

A Yes, sir. These two soldiers that were standing in door E --

Q Now, of whom are you speaking?

A Those two that I identified before.

Q When you say before, you mean before the Court today?

A Yes, at this minute, this moment.

Q All right. Tell us about those two soldiers?

A The one on the left was armed with a knife. This one here had a club. I was right here (indicating).

Q What is right here?

A At door B; after I had pushed Haskell. So that I wouldn't be clubbed or hit from those that were coming, I preferred to face these two because they were in closer quarters. I advanced with violence at this man, the one who had the knife.

Q When he says "advanced with violence", what does he mean by that?

A Running with force.

Q Running with force. All right. Then what happened, if anything?

A I tried to hold firm the arm of this man with the knife.

Q All right. Then what happened, if anything?

A This one who was standing near the one with the knife gave me a blow with a club on the head. He could not hit me with much force, because I was standing right next to him, on top on the head. As soon as I received the blow from the head, I ducked, which left the arm of this other free and he lunged at me like this with a knife (illustrating).

Q Now, do you know which of the two you have identified before the Court had the club and which had the knife?

A I don't remember this.

Q All right. Now, I want you to come with me and see if you can identify any one of the number of accused here as having been in the orderly room on the occasion in question.

(Witness inspects accused seated in the court room and points to one of the accused.)

Q Is this the soldier you pointed to?

A Yes, sir.

Trial Judge Advocate: I ask the Court to ascertain this accused's name.

Law Member: Ask him first if he knows his name?

Q Do you know his name?

A No.

Law Member: Will the gentleman who has just been pointed out stand up and give his name.

The individual indicated by the Witness then arose and announced his name, as follows: Private Wallace A Wooden.

Q Private Wallace A. Wooden. Now where did you see the accused Wallace Wooden on the occasion in question?

A As soon as door D was open he was one of the first men I saw.

Q One of the first men you saw do what, if anything?

A Some had clubs in their hands, while others had bricks and they were all holding them this way in the act of throwing them (indicating).

Q Now, did you see what the last soldier you identified had in his hand?

A Most probably this one had a brick, a stone.

Trial Judge Advocate: Well, I agree that be stricken.

Law Member: That may go out. "Most probably he had a brick."

Interpreter: Most probably he had a stone.

Law Member: "Most probably he had a stone" will be stricken out.

Q Ask him if he knows definitely what he had.

A Since he had his hand raised, he did not have a club; but I do assume that he had a stone in his hand.

Law Member: Now strike out "I do assume that he had a stone in his hand."

Q All right. Now did you after seeing the soldier you have just identified, Private Wallace Wooden, in door D, did you thereafter see him do anything that you are definite about?

A I could not see.

Q Now, come with me and see if there are any others among the accused whom you saw in the orderly room on the occasion in question?

A (Witness inspects accused seated in the court room, and points to one of the accused.)

Q You are pointing to this man (pointing)?

A Yes, sir.

Q Do you know his name?

A No.

Trial Judge Advocate: I will ask the Court to ascertain that.

Law Member: Will that gentleman stand up, please, and give me your name?

The individual indicated by the witness then arose and announced his name, as follows: Technician 5th Grade Lee A. Dixon.

Q Now, where in the orderly room did you see the accused technician 5th Grade Lee Dixon?

A Once I had been struck I placed myself here, this wall (Indicating).

Q The wall next to what doorway?

A Right near door E.

Defense: What was that?

Trial Judge Advocate: Right near door E.

Q All right. What about the accused that you have just identified?

A He entered from here (indicating).

Q From door E?

A Yes, sir. I wanted to say that the first two who had clubbed me ran up here to Farr, to Sergeant Farr.

Q They ran to Sergeant Farr.

Law Member: Those were the two who had accosted him previously?

The witness; The first two that I have identified.

Law Member: All right.

The Witness; Those two were the ones who struck.

Law Member: But the question related to the man who was just identified, Lee A. Dixon.

The Witness: I am explaining now how I was able to see Dixon.

Q All right. Tell us where you saw Dixon and where you were when you saw him?

A I was here (Indicating) and I saw him entering through door E, and I saw him stand still with the group that was in door B.

Q Did you see whether or not --

A (Interrupting) The group who were standing here (indicating) had attacked Sergeant Farr.

Q All right. Did you see whether or not the man you have just identified had anything in his hand?

A I did not pay attention to what he had in his hand. He had something in his hand but I don't know what it was.

Q Now you spoke of --

Defense: May we have the last answer?

Interpreter: He had something in his hand but I don't know what it was.

Q Now you mentioned the group attacking Sergeant Farr in doorway B. What did you see as to that?

A Those men that were standing here (indicating), I saw them move up towards Sergeant Farr and I saw them surround Sergeant Farr, but I could not see what they were doing to the Sergeant.

Defense: If the Court please, at this junction I want to strike all the Witness' previous testimony with respect to the group standing in door B striking Sergeant Farr.

Trial Judge Advocate: I join in that.

Law Member: I don't think he said striking. This group had attacked Farr.

Defense: Well, whatever the word was.

Law Member: That may go out.

President: For the benefit of the members of the Court, anything stricken out should not be taken into your notes. That is with regard to that group that attacked Sergeant Farr.

Q After this group left the point where Sergeant Farr was did you have occasion to see Sergeant Farr?

A No, sir.

Q All right. Come with me and see if there is anyone else among these accused whom you saw in the orderly room on the occasion in question?

A (Witness inspects accused seated in the court room, and points to one of the accused.)

Q Do you know his name?

A No, sir.

Q This is the soldier --

Law Member: Just touch him in the back. Now, will the gentleman who had a hand laid on his back stand up and give his name?

The individual indicated by the Witness then arose and announced his name, as follows: Private First Class John Lee Hamilton.

Q Private First Class John Lee Hamilton. Now where did you see the soldier you have just identified, Private First Class John Lee Hamilton?

A In the group that was standing still in the corridor between door A and door D.

Q With reference to the time that this door D was broken into. when did you see the accused John L. Hamilton whom you have just identified?

A As soon as the door was crashed.

Q Do you know whether or not he had anything in his hand?

A I can't tell; I can't be sure.

Q All right. Come with me and see if there is any others you can identify as having seen in the orderly room that evening?

A (Witness inspects accused seated in the court room.) Yes, sir.

Q Can you point him out, please?

A (Witness points to one of the accused.)

Q Do you know his name?

A No, sir.

Law Member: Now, will the gentleman in the back row who was just touched on the shoulder stand up and give his name?

The individual indicated by the Witness then arose and announced his name, as follows: Private Booker Townsell, sir.

Q Private Booker Townsell. Now, where did you see Private Booker Townsell, the soldier you have just identified?

A Entered the same, through door E.

Q Did you or not see him do anything after entering door E?

A No, sir.

Q Do you know whether or not he was armed?

A He had something in his hand but I don't know what it was.

Q Did you see in what direction he went after entering door E?

A From door E he went to door B -- towards door B. He hesitated at door B because in front of him there was confusion.

Q Did you or not see him after he hesitated in front of door B?

A After, I didn't see him any more. A certain time, I didn't see him anymore.

Defense: What was that last?

Trial Judge Advocate: After that I didn't see him anymore.

Q Come with me and see if there is anyone else among the number of accused whom are seated here you saw in the orderly room.

(Witness inspects accused seated in the court room, and points to one of the accused.)

Q Do you know this man?

A Yes, sir. Montgomery.

Trial Judge Advocate: I assume you have no objection to the record showing that it is Roy Montgomery and not Willie Montgomery?

Defense: No, I haven't any objection to that; but, if the Court please, just because this man said his name was Montgomery I think it might be given where he heard and under what circumstances, or whether he took it off the picture he saw.

Trial Judge Advocate: You need have no fear; I will develop it.

Defense: I want you to develop it fully.

Trial Judge Advocate: I will accommodate you.

Q Ask him if he knows the first name of this soldier?
A No, sir. The name Montgomery was impressed upon me because the men who were not as dark as others impressed me most, and besides Montgomery is a name of a general nature.

Trial Judge Advocate: Now, I think, if the Court please, we ought to ascertain his full name in view of Counsel's statement.

Law Member: Mr. Montgomery, stand up and give us your full name, please.

The individual indicated by the witness then arose and announced his name, as follows: Private First Class Roy L. Montgomery, sir.

Q Now, where did you see the accused Private First Class Roy Montgomery whom you have just identified?
A When I was looking out of the window of room Z, and a window that was protected by a screen, I saw this Montgomery who had stopped here (indicating).
Q Now, here. Is that in front of the window or close to the window, or what?
A In front of the window and near it.
Q Of what room?
A Of the room Z, the window of room Z.

Defense: I assume you will agree that the record is indicating that was on the outside of the room.

Trial Judge Advocate: Oh, yes. I will stipulate with you it was on the outside.

Defense: It didn't show it so far.

Law Member: Yes, he did. He said when he was looking out the window he saw him outside.

Defense: I didn't so hear him.

Law Member: In front of the window and near it.

Q And what, if anything, was the accused Roy Montgomery, whom you have just identified, doing?
A For a few seconds he remained still, standing still. Then I saw him two or three times as he was passing in front of this window. Then he stopped almost near door E. After,

he went this direction (indicating), and I did not see him anymore.

Law Member: Which direction was that?

The Witness: In the direction of the other window.

Q Of what room?

A Room Y.

Trial Judge Advocate: I think the record should show without the necessity of repeating it that all of these transactions that he is pointing to are in connection with Prosecution Exhibit 3.

Defense: That is correct.

Q Now, did you or not notice whether the accused Roy Montgomery whom you have just identified, was carrying anything as he was walking?

A This I don't remember.

Q All right. Come with me and let's see if there are any other accused whom you can identify as having been in the orderly room on the occasion in question?

A (Witness inspects accused seated in the court room and points to one of the accused.)

Q This man right here. (To interpreter) Ask him if it is the sixth man from the end on the second row?

A The sixth man in the second row.

Q Do you know his name?

A No, sir.

Q This is the man pointed to, if it please the Court (indicating).

Law Member: Now will the sixth man in the middle row stand up and give his name?

The individual indicated by the Witness then arose and announced his name, as follows: Private Richard Lee Sutliff, sir.

Law Member: Sutliff?

Accused: Yes, sir.

Q Private Richard Lee Sutliff. Where did you see the accused Private Richard Lee Sutliff on the occasion in question?

A I saw him here in room X after they had entered.

Q All right.

Defense: What was that answer, please?

The Witness; I saw him here in room X after they had entered.

Q Now, what, if anything, did you see the accused Private Richard Lee Sutliff do?

A I did not see if he was doing anything. I saw that he had a stone in his hand.

Q About what size stone was it?

A A large stone.

Q Are you able to pick one out from this Prosecution Exhibit 14 that resembles it?

A About this measurement (indicating).

Trial Judge Advocate: This has previously been offered in evidence, but as one of a number of stones and bricks, and I will not reoffer it for that reason. I wonder if you feel that a description should be given of it in the record?

Law Member: That is entirely up to you, Colonel. I don't believe it should be offered as a separate exhibit.

Trial Judge Advocate: I don't want to offer it as a separate exhibit to keep from getting it confused, so I will not offer it.

Q Now, I wish you would come with me over here to the accused and see if there is anyone else among that number whom you saw on the occasion in question?

A (Witness inspects accused seated in the court room.) Yes, sir.

Q Will you point to him?

A (Witness points to one of the accused.)

Q The first man on the front row. Do you know his name?

A No, sir.

Law Member: Will the man who has just been pointed to stand up and give his name.

The individual indicated by the Witness then arose and announced his name, as follows: Technician 5th Grade Leslie T. Stewart.

Q Now, where did you see the accused, whom you have just identified, on the occasion in question?

A In room X.

Q What, if anything, was he doing?

A I can't remember.

Q Do you know whether or not he was carrying anything?

A No, sir.

Q All right. Let's see if there is anyone else among the number of those accused you saw on the occasion in question?
A (Witness makes an inspection of the accused seated in the court room.)

Interpreter: He wants to know, have I already pointed out the fifth man in the second row -- the fifth man, have I pointed him out?

Trial Judge Advocate: Have you any objection to that being asked?

Defense: I don't know what the question was.

Trial Judge Advocate: Whether he has pointed out the fifth man in the second row -- whether he already pointed him out.

Defense: I haven't any objection.

Trial Judge Advocate: Let the record show that Hamilton has been pointed out.

Q All right. See if you see any other man than the fifth man in the second row?
A Yes, sir.

Q All right, point to him.
A (Witness points to one of the accused.)

Q This man? (Indicating)
A The fourth man in the first row.

Q Do you know his name?
A No, sir.

Trial Judge Advocate: The fourth soldier in the first row.

Law Member: Will you stand up, please.

The individual indicated by the Witness then arose and announced his name, as follows: Private First Class Arthur Williams.

Law Member: I didn't get it.

Trial Judge Advocate: Private First Class Arthur Williams.

Q Now, where on the occasion in question did you see the accused you have just identified?
A As soon as door D was opened.

Q You say as soon as door D was opened. Will you explain that a little further and tell the Court whether he was among the first or among the second group, or just when he entered?
A Once door D was opened, the bar fell, I observed this man that was facing me among the first men that were standing in that corridor -- in this corridor.

Q Did you or not notice whether he had anything in his hand?

Defense: Before you have that question answered, may I have the last answer?

(Last answer read by reporter.)

Interpreter: I mean "in this corridor," not "in that corridor". Does that also go on the record? That was an error on my part. I meant to say, "in this corridor" and I corrected myself.

Law Member: We want the correct answer.

Interpreter: It is "in this corridor" and not "in that corridor".

Law Member: All right, the record will be corrected.

Q And when you spoke of a corridor, where does this corridor run?

A This corridor is in room R. I intended to say a corridor, because here was a large bench (indicating), and on this side there was a large bench (indicating), and desks behind this bench, which formed a corridor right here (indicating).

Law Member: And, "right here" is between A and D?

The Witness: Yes, sir.

Q When you spoke a few minutes ago when the door opened, what did you say fell?

A Staff Sergeant Perata fell to the floor. These men that were standing in the corridor between door D and A retired a little and were watching what was happening in room X, and at that time I was in front of door B and I was watching them to see what they would do.

Trial Judge Advocate: Now, if it please the court, I have had this Witness on his feet for an hour and it is 3:00 I observe. I am going to request, however, if a recess be made at this time, that this Witness be kept away from the accused because I don't want him to have any further opportunity to look at them other than what the Court itself sees; but I do think in fairness to the Witness, and since it is recess time, I would appreciate it if we could have a few minutes recess.

President: The Court will take a fifteen minute recess.
(To Trial Judge Advocate) You take charge of the Witness.

Trial Judge Advocate: All right, fine.

President: The Court is recessed for fifteen minutes.

The Court thereupon recessed at 3:00 p.m., and reconvened at 3:20 p.m., 22 November 1944.

President: Is the prosecution ready?

Trial Judge Advocate: Yes, sir.

President: Is the defense ready?

Defense: Yes, sir.

President: The Court will come to order.

Trial Judge Advocate: Let the record show each of the accused, members of the Court, personnel of the defense, as well as the prosecution are all present.

The interpreter and reporter were also present.

Sergeant Major Augusto Todde, 28th Italian Quartermaster Service Company, a witness for the prosecution, again resumed the witness stand and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant Todde, come with me and carefully look over the accused and see if there is anyone else you can definitely identify as having been in the orderly room on the occasion in question.

A (Witness inspects accused seated in the court room.) Yes, sir.

Q All right, will you point to him, please?

A (Witness points to one of the accused.)

Q He is pointing to the first man at this end of the second row. Now, do you know his name?

A No, sir.

Q Was this the man you pointed to (Indicating)?

A Yes, sir.

Law Member: Will the last man in the middle row stand up and give your name.

The individual indicated by the Witness then arose and announced his name, as follows: Private Richard Barber.

Law Member: Barber?

A: That's right.

Q Sergeant Todde, where did you see Private Richard Barber, the man you just identified, on the occasion in question?

A I saw him as he was one of the very first men that were standing in front of door D at the moment Door D was opened.

Q Do you recall anything that impressed you about his dress?
A He was dressed in fatigues.

Q Was he or not wearing anything on his head?
A On his head he had a helmet.

Q Do you recall whether or not he had anything in his hand?
A No. I remember that he had his hands raised, from which I can assume that he had a stick; but I do not well remember whether he had a stick.

Law Member: Straighten out that answer. "I can assume," goes out. "He had his hands raised," everything but that goes out.

Q Come over here and look over all the accused again and tell the Court whether or not there is anyone else you saw in the orderly room on the occasion in question?
A (Witness inspects accused seated in the Court room.)

Defense: If the Court please, I would like to have the record show this witness has heretofore spent considerable time going over the line of these accused; that he didn't identify anyone the last time he went over them until he reached the last row, and that he is now starting over the same accused in the same manner again.

Trial Judge Advocate: If it please the Court, the Court is seeing exactly what this Witness is doing.

Defense: But the reviewing authority doesn't know it.

Trial Judge Advocate: But certainly it would be improper to speculate on whom this Witness has looked at and who he hasn't looked at.

Law Member: I think that is impossible, Major.

Defense: Well, I don't think it is fair to these accused, unless there is something in the record, by which the reviewing authority can know this Witness has gone over this entire group of accused, forty-two of them, on his last attempt and didn't identify a single one the last time until he got to the last row.

Trial Judge Advocate: He didn't get to the last row; he got to the middle row the last time.

Defense: He certainly did get to the last row. The man he identified is sitting on the end.

Trial Judge Advocate: Of the middle row.

Law Member: Of the middle row.

Defense: Well, the point is he went clear down the entire section of the accused.

Law Member: The record may show that the accused throughout the identification is walking up and down in front of the chairs in which the forty-two accused are seated. At the time that he identified the last man, Barber, he walked from the left hand of the section where the accused are seated to the right hand and picked out that particular accused in the last seat in the middle row. Is that satisfactory?

Defense: That is satisfactory.

Trial Judge Advocate: And if we are to be entirely fair about it, let's further let the record show after the accused came in after the recess just declared they were not seated in the same manner they were seated beforehand.

Defense: I won't agree to that.

Law Member: I don't agree to that.

Trial Judge Advocate: If you don't agree, I will ask the Court to swear me and I will testify -- if Counsel won't agree.

Defense: I won't agree. You can proceed as you see fit.

Assistant Trial Judge Advocate: (To Law Member) When you made your statement you said the accused was walking up and down.

Law Member: (To reporter) Mr. Rasmussen, will you correct my statement to say the Witness was walking up and down instead of the accused.

Q All right. Let's proceed and see if anyone else you can identify?

A The fourth man in the second row.

Q From the end. Come with me.

A (Witness points to one of the accused.)

Q Do you know his name?

A No, sir.

Law Member: Will the fourth man in the second row stand up and give his name?

The individual indicated by the Witness then arose and announced his name, as follows: Corporal Johnnie Ceaser.

Law Member: Corporal who?

Trial Judge Advocate: Johnnie Ceaser.

Q Now, the man you have just identified, Corporal Johnnie Ceaser, where did you see him on the occasion in question?

A I do not remember exactly with precision where I saw him, but I certainly remember that he was present at that time.

Q Can you be sure whether he was inside the orderly room?
A He was inside the orderly room but I don't remember if he was at door E or in door D, or in room X.

Q Do you know whether or not --

Defense: I think that last question, if the Court please, was highly leading and suggests the answer. It does me no good to object to a question after it has been asked as the answer is practically put in the Witness' mouth.

Law Member: Just a minute, Major. Your objection came after the answer was complete, which was rather an extensive answer, and I certainly can't rule prior to the giving of an answer if you don't object.

Defense: I think irrespective of whether I object the Court has some responsibility. Even my failure does not waive objection, and after a question has been asked if I object then for the first time, the question has already been asked and the answer is suggested to the Witness.

Law Member: Just a minute. In this particular case an answer can't be suggested to the Witness because he doesn't know what the question is.

Defense: I am referring to the last question asked. I am calling the Court's attention to it. I think Counsel should be admonished not to ask such leading questions.

Law Member: I would like to hear it.

(Question read by reporter.)

Trial Judge Advocate: Can you be sure whether he was inside the orderly room.

Law Member: Is that leading?

Defense: It certainly seems to me that question suggests the answer.

Law Member: The objection is overruled.

Defense: The Witness just said prior to that time he couldn't be sure where the man was. Counsel, for him, puts him in the orderly room.

Law Member: He said he just did not remember where he saw him. The objection is overruled. Now, I would like to have the answer.

(Answer read by reporter.)

Q Do you know whether or not he had anything in his hand?
A No.

Q All right. Now, I am going to ask you to take one more, look over these accused and see if there is anyone there whom you recognize and can positively identify as having been seen by you on the occasion in question.

A (Witness makes an inspection of the accused seated in the court room.) I don't think so.

Q All right. Have a seat. Did you or not see any military police arrive at the orderly room on the occasion in question?

A No, sir.

Q After you were injured, as you testified, what did you do?
A I remained at the point which I indicated first.

Q And state whether or not you at any time were taken to a hospital?

A Yes, sir.

Q How were you taken there?

A With an ambulance.

Q Do you know whether or not Private First Class Gould was hurt on the occasion in question?

A Yes, sir.

Q Do you know whether or not he was taken to the hospital?

A Yes, sir. He was taken there with me.

Q Do you know an Italian soldier by the name of Bigatti?

A Yes, sir.

Law Member: How do you spell that, Colonel?

Trial Judge Advocate: That is B-i-g-a-t-t-i.

Q Do you know whether or not he was injured on the occasion in question?

A Yes, sir.

Q Did you see anything about his body at any time that indicated an injury?

A Which period are you speaking about?

Q On the evening in question?

A No.

Q All right. Will you tell the Court, please, who, if anyone, you saw with injuries in the orderly room on the occasion in question besides yourself?

A Yes, sir.

Q Name them.

A I saw a Private Fugazza.

Q That is F-u-g-a-z-z-a. Is he an Italian soldier?

A Yes, sir.

Q Describe the injuries that you saw?

A I do not know exactly where he was hurt, but I saw that his face was full of blood.

Q Anyone else?

A Corporal Major Ferrante.

Q What did you see about him that indicated an injury?

A Also his face was bloody.

Q Anyone else?

A After I saw Captain Cellentani.

Q What, if anything, did you observe as to Captain Cellentani?

A I observed that they were taking him into the ambulance in which I was in, being held by a Private Marino Guiseppe.

Q Were you able to observe anything about him that indicated an injury?

A Yes, I saw him with my own eyes because we traveled in the same ambulance.

Q What was it that you saw?

A I saw that he had a swollen eye.

Q Now, did you see anyone else that was injured?

A Have I already mentioned Perata?

Q No, you have not. Tell us about Sergeant Perata.

A I saw Sergeant Perata as soon as door D was opened in the orderly room.

Q Describe what injuries you saw?

A He was seated on the floor and blood was oozing from his face.

Q Did you see anyone else?

A After I saw the others, but inside the hospital.

Q State whether or not you were ever called upon to make identification of Negro Soldiers whom you saw in the orderly room at any time subsequent to August 14?

A Yes, sir.

Q About how many Negro soldiers were in this show-up?

A In this group there were many; about three companies.

Q Did you or not at that time make identification of any Negro soldiers whom you saw in the orderly room on the occasion in question?

A Yes, sir.

Q State whether or not the accused whom you have identified before the Court today were identified by you at that time?

A Yes, sir.

Q Did you thereafter at any time see photographs of a number of Negro soldiers?

A Yes, sir.

Q Who showed you those photographs?

A They were shown to me by the Colonel, and then by the Major.

Q Well, tell him to point out the Colonel he called the Colonel who showed them to him.

A (Witness pointed to Colonel Jaworski.)

Trial Judge Advocate: All right. Let the record show he pointed to the Trial Judge Advocate.

Defense: I will stipulate that, and that I am the Major.

Q Now, I wish you would point to the Major that showed you the photograph.

A (Witness points to Defense Counsel.)

Trial Judge Advocate: And you will stipulate he pointed to the Defense Counsel?

Defense: I will be happy to so stipulate, Counsel.

Q All right. Now, about how many photographs did I show you?

A About fifty.

Q And how many photographs did Major Beeks, the Defense Counsel, show you?

A About thirty.

Defense: Forty-three, to be exact.

Q At the time these photographs were exhibited to you by me, state whether or not you selected from those photographs any particular one whom you identified as having been in the orderly room?

A Yes, sir.

Q Were they or not the same ones whom you have identified before the Court today -- the same persons?

A Yes, sir.

Q How many times did I show you these photographs?

A First I saw some; then he returned again and I saw some others. These fifty photographs I saw at two different times.

Interpreter: He meant to say by that -- to make this explanation, interpret it exactly -- that these fifty photographs he saw part of them the first time and the other part the second time.

Law Member: That is not quite responsive as to what your question was. The question was how many times you had shown them.

Trial Judge Advocate: Yes. May I follow that up then.

Q State whether or not the fifty photographs although shown at two different times, part at one time and part the other time as you have explained, were exhibited to you by me one time or more than one time?

A No, sir.

Q Well, by no, sir, do you mean one time?

A Yes, sir.

Q Now, please tell the Court how you knew the name Montgomery of one of the accused; how did you learn that name?

Defense: He has already answered that question once, if the Court please. I think he made an explanation over there at the time he identified him.

Trial Judge Advocate: I think I promised you I would go into it.

Law Member: No, he said he remembered the name Montgomery due to the lighter color of the boy's complexion and that it is a general name.

Trial Judge Advocate: Yes, sir, but somehow the Witness obviously learned the name Montgomery the first time. That is what I want to know.

Defense: Go ahead. I will withdraw the objection.

Q State how you learned the name Montgomery with respect to one of the accused you identified?

A Because the name Montgomery I had heard it said many, many times; and the second reason is because I forced myself to identify this mulatto who is speaking with Farr.

Q You mean Sergeant Farr?

A Yes, sir.

Q Well, from whom or through what source did you first learn his name was Montgomery?

A The first time I went to identify them I saw him pass and identified him. The second time I went to the Port, and there I was interrogated and he was sitting nearby and I heard his name several times, and that is how the name was impressed upon me.

Q Now, Sergeant Todde, has -- well, you have testified he showed photographs to you, so I assume that is all right.

Trial Judge Advocate: I do feel this stone that has been identified by this Witness should be described for the record, because it was referred to as "this stone", and I won't feel quite right about it unless the record shows some description, I wonder if Counsel would feel this (hands rock to Defense Counsel). Well, Counsel will stipulate with me this stone weighs about two pounds, and we might say it is oval in shape.

President: An oval granite boulder.

Trial Judge Advocate: An oval granite boulder.

Law Member: That is rock taken from Exhibit what? 14?

Trial Judge Advocate: That is right, sir. The Prosecution has no further questions.

President: Any questions by the Defense?

CROSS-EXAMINATION

Questions by Defense:

Q Todde, where were you taken prisoner?

A Cape Bon, Tunisia.

Q Had you previously been in the Ethiopian Campaign?

A No, sir.

Q Now, on the evening of August 14, where had you been earlier in the evening prior to the time of the altercation?

A I was in barracks where I was sleeping, 709.

Q Well, how long had you been in the barracks?

A I went to my barracks about five minutes to eleven.

Q Where had you been prior to that time?

A I was in the orderly room.

Q For how long a period of time were you in the orderly?

A All day.

Q What time did you have your dinner, the evening meal?

A 5:30.

Q 5:30. In your mess hall do you occupy a regularly assigned seat?

A Yes, sir.

Q Do you sit in the same seat every meal?

A Yes, sir.

Q Now after you had finished your dinner what did you do then?

A I made formation.

Q Well, what time was the formation over?
A At about 6:15. I don't remember whether it was 6:15 or 6:30.

Q Then what did you do?
A After I went into formation together with all the other members of the company.

Law Member: What is that?

The Witness: After I was present at formation together with all the other members of the company.

Q (To interpreter) Well, you didn't make him understand. I asked him a moment ago what time the formation was over, so ask him what time the formation was over.
A I don't know with exactness.

Q Oh, approximately what time?
A About an hour after, the formation was over.

Q Well, after the formation was over what did you do?
A I went back to the orderly room and I worked on things for the next day that I have to do every day.

Q Had you taken a walk around through the Fort at any time on the evening of August 14 prior to the time you went to bed?
A No, sir.

Q At any time during the day of August 14 had you been away out of the Italian area?
A No, sir.

Q Had you been in the PX any time during the day of August 14?
A No, sir, not that day.

Q Well, ask him if the day before that, August 13, Sunday?
A There was some squad that was on duty; some detail.

Q What did you do?
A I remained in the area all day.

Q He didn't go out of the area at all that day?
A No, sir.

Q How long were you stationed there at Fort Lawton in the Italian area as shown on Prosecution Exhibit 2?
A From the month of March to the 1st of October, this year.

Q How long a period of time had the ---

Interpreter: Excuse me a minute. That date there, it is May and not March.

Q All right. How long a period of time had the colored Port Companies occupied the adjoining area? Oh, approximately.

A I don't remember, but I know they arrived there about a month or so before this incident occurred.

Q During that month didn't you frequently have opportunity, occasion, to go up Lawton Road towards the main part of the Post?

A No, sir.

Q Didn't you ever go up Lawton Road during that period in a southeasterly direction up the hill towards the main part of the post?

A I used to go sometimes to the movies in the evenings, but that is all.

Q That was during the summertime, wasn't it?

A I am speaking about the period that those colored soldiers were stationed near our company.

Q So am I. That was during the summer when the days were long, were they?

A The days were getting shorter.

Q Well, ask him during that period of a month about what time was it before it was dark?

A When I would go the movies, and I would go to the second show, and it was then beginning to get dark.

Q Beginning to get dark. All right, But when you went to the movies you would go up from the Italian area up Lawton Road, up the hill in a southeasterly direction, wouldn't you?

A He doesn't understand the direction in which you asked him.

Q Well, you come over here to the map and show the Court the direction you took from the Italian area when you would go to the movies?

A I ask if this is the area where the PX was (indicating)?

Q I think the PX is one of these buildings, 723, 724 or 725.

Law Member: Anybody know where the PX is?

Defense: One of those buildings; I am not sure which one. Do you know, Colonel, which building the PX is?

Trial Judge Advocate: I don't know whether it is shown on this map.

Defense: It is one of these three buildings. It is one; I am not sure. I think it is 723 myself. It is either 723, 724 or 725.

Trial Judge Advocate: I can't be sure.

Assistant Defense: It is 723.

Defense: I think it is.

Q Well, you assume for the purpose of the question now that building 723 was the PX?

A Here is the street (indicating); here is another street (indicating).

Q Well, he is indicating Wyoming Avenue and Lawton Road.

A However, I would exit from the orderly room and proceed up this street (indicating) --

Q Up Lawton Road.

A -- (Continuing) to the theater.

Q Well, in going to the theater you would encounter colored soldiers, wouldn't you, from time to time?

A I have never paid any attention.

Q Do you want this Court to understand that when you were walking outside the Italian area you have no recollection of whether or not you ever met any colored soldiers?

A I say yes on this because I used to go to the movies very sparingly. I didn't have much time to go. I would look at my watch and when it was one or two minutes before the show started I would immediately leave and go with speed, sometimes go in a car, a service car, that we had in the company. Sometimes I would return to the company area because there was no more seats in the theater.

Q How often did you frequent the PX?

A I hardly ever went there. They bought cigarettes for me.

Q You want this Court to understand that you used to stay right in the Italian area all of the time and never left?

A I have never requested to go outside the company area. The first time I ever requested to take a step outside was a week ago -- the first time I ever left.

Q Only one time in all the time that you have been stationed there at Fort Lawton prior to the occurrence of this incident on August 14 that you ever left Italian Company area, is that right?

A From Fort Lawton I have never been outside. I have only gone outside of the Fort at Mt. Rainier, but never from Ft. Lawton.

Q Ask him if we are to understand that during the time he was stationed at Fort Lawton he only went outside the Italian area, bounded by Wyoming Avenue and Lawton Road, on one occasion?

A I have gone out of that area more than once.

Q That is what I am trying to get at.

A Sometimes I have gone to the hospital.

Q How frequently would you leave the Italian area and go outside?

A I have never counted them, but certainly not very much -- very many times.

Q Well, on the times you did go out you encountered colored soldiers quite frequently there, didn't you?

A It is possible, it is probable, but I have never seen them.

Q We understand then prior to the night of August 14 you have no recollection of ever seeing a colored soldier at Fort Lawton prior to that night?

A Probably I have seen them but I have never noticed them, because if you are not interested in something you don't notice them.

Q Do you have any recollection of any specific occasion prior to the night of August 14 when you ever saw a colored soldier at Fort Lawton?

A It is something that I have never noticed, whether I met them or not.

Q Now, on the night of August 14th you occupied barracks No. 708, did you?

A No, sir.

Q You were in 709?

A Yes, sir.

Q At the time you went to bed were the lights turned out in 709?

A Yes, sir.

Q Were they ever turned on again after that to your knowledge?

A No, sir.

Q Were the lights on in barracks 708 at the time you went to bed?

A They were out.

Law Member: What building was that?

Defense: 708.

Interpreter: Is this at 11:00?

Q That is when he went to bed, wasn't it, 11:00?

A Yes, sir.

Q To your knowledge were the lights ever on in 708 again after that?

A I don't know, sir. I don't know.

Q To your knowledge they were never turned on after that?

A I don't know.

Q At the time you went to bed at 11:00 were the lights on or off in 710?

A I don't know.

Q Did you ever have occasion at a later time to look at 710?
A No, sir.

Q On barracks 708 is there a light on either end of that building on the outside?
A Yes, sir.

Q Which end?
A (Witness indicates).

Q There is a light on the end of 708 farthest away from Lawton Road, is that right?
A Yes, on this side (indicating).

Q Is there a light on the other end of barracks 708 closest to Lawton Road?
A I don't remember if there was a light here, but there was a street light nearby.

Q On the night of August 14th there was a street light?
A I don't know; I don't remember.

Q Well, ask him what it was he just said. I thought he just said there was a street light.
A Here there is a light, a pole with a light on it, (indicating), but I don't remember whether there was a light on this side of the barracks 709 or whether this pole with a light on it was placed there only -- whether it was there on the night of August 14th or placed there after August 14th.

Q Well, to the best of your recollection was there a street light, or a light on a pole, in the vicinity of barracks 709 on the night of August 14th?
A I can't remember.

Q Was there a light on the end of barracks 709 on this night?

Law Member: Major, I suggest you designate light or light fixture. Yousee, he said the lights in 709 were out. Now, you are asking about a light. I think you mean a light fixture.

Defense; No, I meant a light. I intended to ask him, though, whether a light was burning on the ends of the buildings.

(Question read by reporter.)

A I don't remember.

Q Now, on barracks 708 was there a light burning on the end that you have described there being a light on the evening of August 14th?
A Yes, sir, this light here (indicating).

Q Well, that is the end of the barracks closest to Wyoming Avenue.

Interpreter: He says yes, but he doesn't understand the way the map is made.

Q Well, ask him what he doesn't understand about it and we will try to explain it to him.

Interpreter: He says it is a little bit changed, since this tent, he already explained, shouldn't be like this; it should be turned around; it should be changed (indicating).

Q Ask him if there is anything else?

A No.

Law Member: Major, at the end of 708, at which the Witness has testified there was a light on, why don't you have him put the letter "T" with a circle around it?

Defense: All right.

Q Where was this light on 708?

A (Witness indicates.)

Defense: I have drawn there a "T" with a circle around it as the place the Witness indicated.

Q At 11:00 when you went to bed was that light burning?

A I didn't see it when I went to bed.

Q Did you see that light on 708 burning at any time later after you went to bed?

A When I went out of the barracks.

Q When you went out of the barracks to 713 you saw the light on 708 burning?

A I did not go out of the barracks to go to 713. I went out of the barracks to come here (indicating).

Law Member: When he says "here", in what direction?

Defense: Toward 708 he was indicating.

Q When you went out of the barracks, out of your barracks 709, and went towards barracks 708 as you are indicating, was the light burning on 708?

A I saw when I stopped here (indicating) that here (indicating) it was light.

Q Well, when you stopped by the Lawton Road end of 708 you could see the lights, you could see light at the other end of 708, is that right?

A Yes. When I stopped here (indicating), I saw people passing by and it was illuminated then. Later on, the second time

I went up this way to go up to here (indicating), I saw a light on there.

Q Up this way. Between 708 and 709 towards barracks 710?
A Yes.

Q Later on that night after the fight was over with did you still see a light burning in front of 708?
A No, sir, because I passed by here (Indicating).

Law Member: And when he says "by here", to what is the Witness indicating?

Defense: He is referring to 708 and 709, the Lawton Road ends at those barracks.

Q So you don't know whether the light on barracks 708 was broken that night or not?
A No, sir.

Q Well, now, when you went over into barracks 713, which is the orderly room, what lights were burning in that room at the time you went in?
A There was one bulb lit here (Indicating).

Q That is on the door side of room R.
A There was a large bulb, about 150 watt. There was another one there (indicating).

Q Well, that is on the northwesterly side of room R he has indicated.
A Then there were lights on in room X.

Q How about room Y?
A No, there it was out.

Q No light on there. Ever any light in room Y that night?
A Room Y, that I have seen, was always out.

Q When you went into room Z after the fight started was there a light in room Z?
A There was a light here at this partition that I put out (indicating).

Q That was a bed light, was it not, on the wall of room Z next to door E?
A Yes, there is a light placed on the wall on top of a bed.

Q And when you went into room Z that was the only light burning?
A Yes, sir.

Q And you turned that light out?
A This one here, yes (indicating).

Defense: If it please the Court, it is a little after 4:30; I can't finish with this Witness in any event.

President: How much longer do you anticipate?

Defense: I have quite a number of things I want to inquire about.

President: All right. The Court* will adjourn and reconvene at 9:00 tomorrow morning.

The Court thereupon adjourned at 4:30 p.m., 22 November 1944, to reconvene at 9:00 a.m., 23 November 1944.

LEON JAWORSKI
Lt. Colonel, JAGD
Trial Judge Advocate

Fort Lawton Staging Area
Fort Lawton, Washington
23 November 1944

The Court met, pursuant to adjournment, at 9:00 a.m., on 23 November 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready?

Defense: Ready, sir.

President: The Court will come to order.

A roll call of the accused, seated in the court room, was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show each of the accused is present, that the members of the Court present at the time of adjournment are present, and the personnel representing the accused and the personnel of the prosecution are also present.

The interpreter and reporter were present.

Sergeant Major Augusto Todde, 28th Italian Quartermaster Service Company, a witness for the prosecution, took the witness stand and testified through the interpreter further, as follows:

Defense: (To reporter) Will you read the last question and answer, please, Mr. Rasmussen?

President: Let's remind the witness he is under oath.

Trial Judge Advocate: You are reminded you are still under oath.

The Witness: Yes, sir.

(Question and answer read as requested.)

CROSS EXAMINATION

Questions by Defense:

Q Handing you Prosecution Exhibit 17, Sergeant Todde, I will ask you to indicate on the map where it was that you originally saw the man indicated in the photograph.

A I saw this boy here (indicating) for the first time.

Defense: Do you recall, Colonel Jaworski, whether you had this witness make any marks?

Trial Judge Advocate: As to where he saw that accused?

Defense: No, any marks at all. I wanted to use some.

Trial Judge Advocate: It seems to me you had him make one yesterday afternoon, an "X".

Q Well, all right. You will indicate the place again.
A That point there (indicating).

Q All right, let's mark that "T-1". Did you ever see the man indicated in Prosecution Exhibit 17 again at a later time?
A Yes, sir.

Q Where?
A First he went this way (indicating), and then he come back --

Q Wait a minute. First he went from the point "T-1" towards the door E?
A Yes, sir.

Q And then he came back towards the point "T-1" again?
A And then he walked back and forth in front of the window a couple times.

Q In front of the window to Room Z.
A And then he proceeded to a point near door E.

Q Well, have him indicate where that was.
A (Witness indicates).

Q We will mark that "T-2" on Prosecution Exhibit 3.
A I saw the man who left from here (indicating), he remained still here (indicating).

Q You saw the man who left from "T-1" remain still at the point marked "T-2". Now, where were you at the time you saw the man at the point marked "T-2"?
A I was always inside this window, window of room Z.

Q All right, let's mark that "T-3". Is that approximately the place?
A More towards the angle.

Q At this point "T-3". We will mark that "T-3". Now after you saw the man shown in Prosecution Exhibit 17 at the points marked "T-1" and "T-2", did you ever see him again or at any other time that night?
A I saw that he returned from here (indicating) --

Q Don't say "here."

Interpreter: I am just repeating what he said.

Q Returned from "T-2".
A To here (indicating).

Q To the point "T-1".
A Then he went this way (indicating) and I never saw him again.

Q He went from "T-1" back past door E and he never saw him again.

Defense: I trust, Colonel Jaworski, when I am repeating the witness' testimony, to identify it in the record, you will correct me at any time you don't agree.

Trial Judge Advocate: Quite all right. I wonder if it wouldn't be better to let the Court know whom you are talking about on Prosecution Exhibit 17.

Law Member: That is Montgomery. There is one suggestion I have. After the witness has marked an exhibit with "T-1", "T-2", whatever it is, when he again refers to that point have him refer to it as it is marked, will you?

Defense: Yes, sir. A very good suggestion.

Q Now had you ever observed Montgomery before you saw him at the point marked "T-1"?

A No.

Q Now during the course of the evening of August 14th, did you have occasion to see Corporal Haskell or Sergeant Farr, or both of them, talking with anybody in doorway B as shown on Prosecution Exhibit 3?

A Yes, sir.

Q And describe the man that you saw either Corporal Haskell or Sergeant Farr, or both of them, talking to in doorway B.

A He was of a mulatto color; about my stature, thin as I am. He had a khaki shirt. I remember particularly, and it remained impressed with me, since he had a piece of cotton in his ear.

Q That man was a colored American soldier, was he?

A Yes, sir.

Q Now indicate the place in doorway B, or in the vicinity of doorway B, that you saw this mulatto?

A I saw this mulatto in the center of door B, a little toward the inside of room X.

Q All right, will you indicate again.

A The first time there (indicating).

Q Let's mark that "T-4". Who was talking with this mulatto?

A Sergeant Farr was speaking with the mulatto.

Q Was Corporal Haskell also speaking to him?

A Corporal Haskell also said some words to this mulatto.

Q All right. Now mark on there where Sergeant Farr was standing at the time he was talking with the mulatto?

A Sergeant Farr was at this point here marked B.

Q Let's mark that "T-5." All right, you show me. Right here?

A Yes.

Q Now where was Corporal Haskell standing?
A The other side of the door; where it swings out.

Q Here? Let's mark that "T-6". Where were you standing?
A The first time I was here (indicating), and then I passed over to this side.

Q Well, let's mark the first time "T-7", Is that right?
A Yes, sir.

Q Right here?
A Yes, sir.

Q We will mark the first place you stood as "T-7" and the next place "T-8". Right here?
A Then I came over here (indicating).

Q All right, let's mark that "T-8". All right you show me. Right there.
A Haskell came towards here (indicating).

Q Well, Haskell came towards the letter B as shown on Prosecution Exhibit 3.
A And the mulatto walked over here (indicating).

Q And the mulatto walked over towards door C, or in the direction of door C.
A Yes; but he always remained nearby, close by.

Q All right. Now, you had occasion to observe that mulatto well?
A Not too well, because I was watching those here and those here (indicating).

Q But you saw him there in the light?
A Yes, sir.

Q And you are not presently able to identify that man?
A If I would be able to see him the way I saw him dressed that night, probably; but not if he is dressed differently. I couldn't be sure.

Q Well, was that man Montgomery, as shown in Prosecution Exhibit 17?
A No, sir.

Q Now, I understood you to say yesterday, Sergeant Todde, that all of the men you identified in this court room yesterday you identified at the show-up down at Camp Jordan. Is that correct?
A No, not all.

Defense: I wonder if the reporter could read back the question asked him by Colonel Jaworski yesterday.

The reporter then read the following questions and answers:

"Q State whether or not you were ever called upon to make identification of Negro soldiers whom you saw in the orderly room at anytime subsequent to August 14th?

A Yes, sir.

Q About how many Negro soldiers were in this show-up?

A In this group there were many; about three companies.

Q Did you or not at that time make identification of any Negro soldiers whom you saw in the orderly room on the occasion in question?

A Yes, sir.

Q State whether or not the accused whom you have identified before the Court today were identified by you at that time?

A Yes, sir."

Trial Judge Advocate: You withdraw the other question?

Defense: I will withdraw the other question.

Q Ask the witness if he heard the testimony he gave yesterday as it was read him.

Interpreter: I don't think so.

Q Ask the witness if he heard the testimony Mr. Rasmussen just read.

A Yes, but I did not understand it all.

Defense: Will you read that part again, Mr. Rasmussen, and read it distinctly and slowly to the interpreter so he can translate it back to the witness.

(The reporter again read the same questions and answers as previously read).

Interpreter: He says the answer isn't correct.

Law Member: His answer isn't material. All we are doing is acquainting the witness with the testimony he gave yesterday.

President: He is not supposed to make any reply; just to listen.

Q What show-up did you refer to when you testified yesterday in the manner which has just been read back and explained to you?

A The first time we went; the first time I saw the men in the three companies.

Q Was that at Camp Jordan?

A I don't know what the name of the camp is.

Defense: Will you stipulate the first one was at Camp Jordan?

Trial Judge Advocate: Frankly, I wasn't there. However, I will be glad to check into it and find out, and will stipulate with you if that is correct.

Q Well, was that show-up that you speak of at Fort Lawton here?
A No, sir.

Q Was it down at the Seattle Port of Embarkation?
A It was in the direction of the Port, but in a camp.

Trial Judge Advocate: That is bound to be Camp Jordan.

Defense: I don't think there is any question about it.

Q Handing you what I will ask to be marked as Defense Exhibit A --

Trial Judge Advocate: May I see it, Major?

Defense: Yes; surely.

Q -- (continuing) did you see this man in the show-up that you originally went to?
A I don't believe so.

Q You don't believe so. Did you identify this man yesterday, showing you Defense Exhibit A?
A Yes, sir.

Q Then your testimony that you gave yesterday --

Law Member: Just a minute. Excuse me. Is that the same picture A when you asked about identification?

Defense: Oh, yes.

Law Member: All right.

Q Then your testimony that you gave yesterday and as was read to you this morning, to the effect that all of the men you identified in this court room yesterday you also identified in the show-up, the first show-up, is incorrect, is it not?
A It is not correct then.

Q As a matter of fact, you never identified the individual shown in Defense Exhibit A on a show-up at anytime, did you?
A The man on the photograph?

Q The man.
A No.

Q And the only identification you ever made of the man shown in Defense Exhibit A was from a photograph shown you by Colonel Jaworski, isn't that correct?
A No.

Defense: (To reporter) Read the question.

(Question read by reporter)

Interpreter: The answer was no.

Q I mean the only identification you ever made of the man shown in Defense Exhibit A prior to yesterday was from the photograph shown to you by Colonel Jaworski?

A Yes, sir.

Q Now, approximately when was it that you first talked to Colonel Jaworski about this case?

A At Mount Rainier about a month ago.

Q About a month ago. That would be, then, about October 23rd?

A I don't remember the date.

Q Well, the first time you talked with Colonel Jaworski was more than two months after August 14th, was it not?

A No, the first time I spoke to him was at Mount Rainier.

Q Well, wasn't that more than two months after the night of August 14th?

A Yes, two months after the night.

Defense: If the Court please, Defense Exhibit A is a photograph of Richard Barber and I offer it in evidence.

Law Member: It will be received as Defense Exhibit A.

A photograph, previously marked Defense Exhibit A for Identification, is received in evidence as Defense Exhibit A.

Defense: (To reporter) Will you mark this photograph Defense Exhibit B for Identification?

(A photograph is marked Defense Exhibit B for Identification by the reporter)

Trial Judge Advocate: May I see it?

Defense: Yes, you may.

Q Handing you what has been marked as Defense Exhibit B for Identification, I will ask you if you have ever seen this man before?

A Yes, sir.

Q When?

Trial Judge Advocate: Now, if you are going to show, introduce an exhibit, offer an exhibit, then I don't think you ought to show a part of it to the witness only. I think he is entitled to see the full exhibit, or the record ought to show a part is covered up.

Defense: I am covering up the name, and I have no hesitancy in saying I am covering up the name.

Trial Judge Advocate: Let's let the record show.

Defense: I am perfectly happy to.

Trial Judge Advocate: Just a minute. I am addressing my remarks to the Court. The fact remains counsel did exhibit only a part of the exhibit that has been offered to the witness. I have no objection to that, show him any part or all, but if it was only a part I think the record ought to show he showed only a part to the witness.

Law Member: I think it is proper cross-examination to do just as he is doing, but I think it should appear in the record.

Defense: I have no objection to it appearing in the record that I am handing the witness the exhibit originally and covering up the name shown thereon with my thumb. In other words, I want the witness to identify the face, not the name.

President: That should be entered in the case of A as well as B.

Defense: Yes, I did the same thing with Exhibit A, and I shall do it with all other photographs I will show him.

Law Member: All right, proceed.

Defense: (To reporter) Will you read the last question?

(Question read by reporter as requested)

Q When have you seen the man shown in Defense Exhibit B before?
A The night of August 14, 1944.

Q Whereabouts?
A In the orderly room.

Q Well, let's go over to the map here. Will you show us on Prosecution Exhibit 3 where you saw the man shown in Defense Exhibit B on the night of August 14th?
A I saw him in the corridor formed by door D and A.

Q Well, point out approximately where it was you saw him?
A About here, about the center (indicating).

Q Hold your finger up there and I will mark it.
A I can't indicate the exact spot; about this point (indicating).

Q Well, I well understand that, but indicate about where it was. About here (indicating)?
A Yes, sir.

Q I will mark that "T--

Law Member: Let's get off the "T's".

Defense: I thought we would follow this man's initials, if the Court please.

Law Member: All right.

Q I will mark this "T-9".

Law Member: "T-9", Major?

Defense: Yes, sir, "T-9".

Q Now, did you see him at any other place that evening?
A Then I saw him when he entered.

Q When he entered what?
A Inside room X.

Q Inside room X, through door D.
A Entereing from door D.

Q Entering from door D. And where did you see him in room X?
A About this point here; approximately at this point (indicating).

Q About here (Indicating)?
A Yes, sir.

Q Let's mark that "T-10".

Trial Judge Advocate: May it please the Court, I don't know what sense this is going to make to the Court unless the Court sees that exhibit and knows what accused or what party the testimony relates to.

Defense: I am not through yet.

Trial Judge Advocate: Oh, you are not through with this particular one?

Defense: No. I am just sorry I have to refer to so much material here.

Q Now the man shown in Defense Exhibit B, how was he dressed that evening?

A I can't exactly say how he was dressed that evening.

Q You don't recall how he was dressed?
A Most probably fatigues. I remember most of them wearing fatigues.

Q Did he have any headgear on?
A He had a helmet.

Q He had a helmet on. Was he armed with a club?
A No.

Q How was he armed, if at all?
A Probably with a stone.

Defense: Well, if the Court please, I move that answer be stricken, "Probably with a stone."

Law Member: It may go out.

Q Do you know whether or not, for sure, he had anything in his hands?
A Yes, he did have something in his hand, but I can't exactly say what it was that he had in his hand.

Q How tall was this man?
A Normal height. A little shorter than me.

Q Let's have him indicate over here on the pole approximately how tall he was.

Defense: Colonel, I am going to do this on maybe several witnesses. I think we might agree on five feet on this pole over here, and we might measure the sixth foot off in inches. Have any objection to that?

Trial Judge Advocate: Not at all.

Defense: Will you come over here, Colonel?

The Trial Judge Advocate and Defense counsel then indicate on a post in the court room the measurements as set out above.

Defense: In order for the Court to understand who we are discussing here, I have no objection to telling the Court. The picture referred to in Defense Exhibit B is one of Arthur Williams. I am going to offer the picture later, if the Court please.

Trial Judge Advocate: I wonder -- just one moment. I wonder if at the beginning of each time you offer these pictures you couldn't just confide in the Court without the witness hearing it.

Law Member: I don't think it is necessary.

Trial Judge Advocate: You are taking notes and I thought it would be a little awkward.

Law Member: It is, but I think it is better to do it that way. Afterwards you can turn back and put down who it was.

Trial Judge Advocate: I thought Counsel could do it without the witness knowing, or pass the picture down the line.

Law Member: I think we can keep track.

Defense: I would be very glad to do that.

Law Member: Well, that's all right.

Q The man we have just been discussing; will you indicate on the pole here his height.

A This high approximately (indicating).

Q All right. You observed him there that night; you give us your best indication of how tall he was. I can't tell which one you are indicating.

A Approximately this high (Indicating).

Q Indicating five feet, five inches.

Trial Judge Advocate: Indicate again.

A (Witness indicates).

Trial Judge Advocate: Five feet, five inches.

Q Now how heavy a man was he?

A Normal. About the same as I am; not too fat and not too thin.

Q Well, how much do you weigh?

A 170 pounds.

Q 170 pounds.

Defense: I will offer Defense Exhibit B.

Interpreter: He wants me to state the following: When I weighed myself I weighed myself with a PX scale. It might not have been very accurate.

Law Member: Now, just a minute. Williams' picture is admitted in evidence as Defense Exhibit B, previously marked Defense Exhibit B for identification.

A photograph, previously marked Defense Exhibit B for Identification, is received in evidence as Defense Exhibit B.

Defense: If the Court please, I don't know what goes on here. I have no way of knowing each time. I assume it is all right, but I don't think the practice is a good one for the witness to be talking to the interpreter.

Interpreter: He stated at the time he weighed himself he had his fortune told on the back of the card. He couldn't read his fortune, so he called Di Gaicomo who was making a phone call at that time.

Law Member: Well, all of that goes out of the record. Desist, Interpreter, from talking to the witness, although you have your interpreter right there, Major.

Defense; I didn't mean to cast any reflections upon the interpreter. I don't think it is a good practice.

Law Member: It appeared to me as a casual conversation.

Defense: I will ask this photograph be marked Defense Exhibit C.

Law Member: For Identification?

Defense: Oh, yes, it is understood they are all for Identification first.

(The photograph is marked Defense Exhibit C for Identification.)

Defense Counsel then exhibited the photograph marked Defense Exhibit C for Identification to the Court.

Q Handing you what has been marked Defense Exhibit C for Identification, I will ask you if you have seen this man before?

A Yes, sir.

Q Did you see him on the night of August 14th?

A Yes, sir.

Q Well, let's go over to the exhibit here. Will you indicate where you saw him?

A About this point here (indicating).

Q He has two fingers; I can't tell where he is indicating.

A As soon as the door was opened.

Q About right here (indicating)?

A Yes, sir.

Q Let's mark that "T-11" on Prosecution Exhibit 3. Now you are positive that is where you saw the man shown in Defense Exhibit C?

A No, I am not positive that was exactly the point.

Q Well, are you positive that it was in approximately that location?

A About this vicinity (indicating). It might have been here, as well as here (indicating).

Q Well, it might have been in the doorway D?

A Yes, sir.

Q Sit down for a moment. Now didn't you testify on direct examination yesterday that you saw the man shown in Defense Exhibit C in room R in the corridor between doors A and D?

A Yes, sir, but then he walked --

Q Wait a minute.

Trial Judge Advocate: Wait a minute. He has a right to explain his answer.

Defense: I asked him what he testified yesterday; not what the man did.

Trial Judge Advocate: He said yes, and then he has a right to explain his answer.

Defense: If the Court please, I only asked this witness if he testified to something yesterday, and that calls for a yes or no answer. No need of explaining it. I only asked him if he testified to something yesterday and that doesn't call for an explanation.

Law Member: Well, is he continuing to tell you where he saw him as he testified yesterday?

Defense: I am not asking, if the Court please; I am referring back, asking if he testified to a certain set of facts yesterday.

Law Member: All right. He answered yes.

Defense: Yes.

Q Now, Sergeant, which is correct? Did you see him in room X, in doorway D, or in the room R in the corridor between doors A and D?

A I saw him in the dorridor and in room X.

Q Well, we will see. Do you remember, Sergeant, when I was out to Mount Rainier a week or so ago and talked with you?

A Yes, sir.

Q And Captain Noyd was with me?

A Yes, sir.

Q Lt. Gagliardo was with me and acting as interpreter?

A Yes, sir.

Q And a stenographer was present, wasn't there?

A Yes, sir.

Q Now, do you recall me handing you at that time the same photograph which is marked Defense Exhibit C?

A You had me look at several photographs.

Q Well, did I ask you to look at this photograph marked Defense Exhibit C at that time?

A Yes, sir.

Q At that time didn't I ask you the following questions, to which you gave the following answers: (Reading) "Q Did you ever see this man before? A Yes. Q Where did you see him? A I don't remember exactly where, but he was present during the fracas."

A He was present in the orderly room.

Q My question was --

The Trial Judge Advocate and Defense Counsel then conferred in private.

Defense: No, there was one further question. I will be glad to read it.

Q (Reading) "Q Did you see him strike anybody? A No." Now, did I ask those questions and did you give me those answers?

A Yes, sir.

Q Now will you come over on the pole here and indicate how tall this man is shown in Defense Exhibit C.

A About the height -- a little taller than me.

Q Indicating five feet, seveninches.

Trial Judge Advocate: He said taller than him.

Defense: He measured on the pole. I would like the witness to do the testifying.

Trial Judge Advocate: He said taller than him; that is what he said.

Defense: Let him indicate. If it isn't satisfactory, the height indicated, let him indicate.

Trial Judge Advocate: (To interpreter) Tell him to make the indication.

Q Indicate again.

A About this height (indicating:..

Q He come right back where he was before.

Law Member: That is his thumb. He didn't mark there, Colonel. He marked with his thumb where it was (to interpreter)?

Interpreter: With his thumb.

Trial Judge Advocate: Would you mind his being asked whether the man was as tall as he is?

Law Member: He has already said it and it is in the record.

Q Will you indicate again so that the Court is satisfied and Counsel satisfied how tall this man was.

A Right there (indicating).

Q Now he is indicating five feet, seven inches. Now, are you certain he wasn't taller than five feet, seven inches?

Interpreter: He wants to know how much five feet is.

Q Here (indicating on pole).

A He could have been a little taller or he could have been a little shorter.

Q Well, approximately an inch taller or an inch shorter?
A Lower, shorter, possibly no; but taller, could have been a little taller.

Q How much did this man weigh?
A It is a difficult question for me because I am not used to giving weights of men.

Q Well, you say you are not used to giving weights of men. Are you used to identifying men under circumstances that existed that night?

A In those conditions, no; but I have from time to time described facial expressions, or faces, but never weights.

Q All right. Suppose you describe this man's facial characteristics.

A When we indicate a man we either say a fat or thin or lean man.

Defense: I move to strike this answer as not being responsive. This man has said he is used to identifying facial characteristics and I have asked him to identify the --

Law Member: (Interrupting) The answer is not responsive and may go out.

Interpreter: Perhaps I misinterpreted that answer. Oh, he understood the question to be if he had -- as a matter of fact, his answer was that he would describe --

Defense: Never mind. The Court has stricken the answer to that question as not being responsive.

Law Member: Let's see, and I may strike this too.

Interpreter: I made an error on the interpretation before.

Defense: I don't want a speech.

Law Member: If the interpreter made an error, I may not strike out the answer. You may not want it out, Major.

Interpreter: When he said characteristics, he didn't mean of the face. He meant characteristics of the body, according to whether a man is fat, lean, tall or short, and he didn't say characteristics of the face, as I understood him to say, at all.

Law Member: That answer may stand. Back away when I said the man has made a mistake, I meant to refer to the interpreter. Now, Lieutenant, interpreter for the defense, what did the witness just say?

Defense Interpreter: He said he meant to say when they identify people they give the general characteristics. He said if the man has an identifying mark on his face, like a scar, he would notice it.

Law Member: Did he also say something about the stature?

Defense Interpreter: The general characteristics indicating the stature.

Law Member: What is your name, Lieutenant?

Defense Interpreter: Gagliardo.

Law Member: And you are here interpreting for Major Beeks?

Defense Interpreter: Yes, sir.

Law Member: All right, that all may stand.

Q Let's go back to the man shown in Defense Exhibit C.

Law Member: That is not in evidence yet. Have you offered it in evidence yet?

Defense: I haven't offered it.

Law Member: You said Defense Exhibit C. I thought maybe you thought it was.

Defense: Would the Court prefer me to use the words "for Identification" each time?

Law Member: It is proper, until it is in evidence.

Q Referring again to Defense Exhibit C for Identification, the man shown in this photograph, what is your estimate of that man's weight?

A About my weight.

Q And for the purpose of the record, what is your weight?

A With the scale that I weighed myself with, 170 pounds.

Q 170 pounds. Now, how was this man dressed on the night that you saw him?

A I can't remember how he was dressed.

Q He can't remember how he was dressed. And did he have on any head covering?

A Possibly yes, but he can't remember. He might have had a helmet.

Q Well, do you recall for sure whether he had a helmet on or didn't have a helmet on?

A Positively, no; but his head was covered. He didn't have a barehead.

Q His head was not bare. And you are positive of that?

A Yes, sir.

Q Now what physical characteristics are there about this man that you are able to identify him as being there that evening?

A His face, which is round and full, a little round and a little full. There is nothing particularly identifying about him, but it remained impressed with me his general picture.

Q You identify this man shown in Defense Exhibit C for Identification from his facial characteristics, I assume, do you not?

A His face and the rest of his stature.

Q Well, come over here a minute, Sergeant. Take this man sitting here (indicating one of the accused). Describe to the Court the difference between the facial characteristics of the man shown in Defense Exhibit C for Identification and this man sitting here.

A Is this the man (indicating).

Q Yes. I am confining that to facial characteristics.

Trial Judge Advocate: If the Court please, I think the record ought to show what man they are pointing to. We have to have some way of knowing; also so the reviewing authority Defense Counsel has been talking about several times might know exactly who you are pointing to.

Defense: I will in due course. I would like to conduct this examination the way I see fit.

Trial Judge Advocate: Just so it will show in the record.

Defense: It will show.

Trial Judge Advocate: All right; fine.

A The other man, referring to the man in the photograph, had a wide nose, open nose. This man does not have this type of nose.

Q Their noses are different, are they?

A Yes, sir.

Q What else?

A Also the expression of his mouth is different from the other.

Q The expressions of their mouths is different.

Defense: (To reporter) Mark this as Defense Exhibit D for Identification.

(A photograph is so marked by reporter.)

Q Handing you what has been marked now as Defense Exhibit D for Identification, I will ask you if that is the man seated here that you are now looking at?

A Yes, sir.

Q All right. Come over here and sit down. You have seen both those photographs before, many times before, haven't you; that is, Exhibits C and D?

A The Major has shown me these.

Trial Judge Advocate: By the Major, who does he mean?

Defense: He means me.

Trial Judge Advocate: All right. You will stipulate it means the Defense Counsel.

Defense: Yes.

Q And the prosecution has also showed you on numerous occasions the same photograph, only an enlargement thereof?

Trial Judge Advocate: (To Interpreter) Be sure and interpret that literally; exactly as it was asked. (To reporter) Will you read it?

(Question read by reporter)

A The first time he showed me the men's photographs, having then pass in front of me, and the second time he showed me many more too.

Q But you have seen these two photographs, Defense Exhibits for Identification C and D, only an enlargement thereof, before?

A Yes, sir.

Q Do you think the individuals shown on these photographs have substantially different types of nostrils?

A Looking well at the photographs they seem alike, but looking at their faces they are very much different.

Q Well, now, you said something about the expression on the lips. Is there a substantial difference in the expressions on the lips you see of the two individuals?

A I see the difference. For me there is a large difference. One person sees a thing one way and another person another way.

Q And that is the way you identify these men?

A Yes, sir.

Defense: I am going to offer these exhibits in evidence.

Law Member: The picture of Hamilton, formerly Exhibit C for Identification, is received in evidence as Defense Exhibit C. Defense Exhibit D for Identification, a picture of Green, is received in evidence as Defense Exhibit D.

The photograph of J. Hamilton, previously marked Defense Exhibit C for Identification, is received in evidence and marked Defense Exhibit C; the photograph of J. Green, previously marked Defense Exhibit D for Identification, is received in evidence and marked Defense Exhibit D.

Defense: Would the Court like to take its morning recess at this time? I don't care. The reporter told me he never liked to go over an hour and fifteen minutes without a rest.

Trial Judge Advocate: He has been going through an interpreter, so that is not so bad.

Defense: I don't care. I would just as soon go on.

President: Let's get that thing square here. If anybody wants a recess, ask for it. The Court will be willing to grant it. If you don't, don't ask the Court for a recess, because the court will take a recess when it wants to.

Interpreter: Is it permissible for me -- can I tell him what the Court said?

Defense; Surely.

Law Member: Surely.

Defense: (To reporter) Mark this photograph for identification.

(Photograph marked Defense Exhibit E for Identification)

Q Handing you what has been marked Defense Exhibit E for Identification, I will ask you if you saw this man on the evening of August 14th?

A Yes, sir.

Q All right. Let's go over on the map and mark where you saw him.

A He was also one of the men he saw immediately after this door (indicating) was opened.

Q That is, door D was opened?

A Yes, sir.

Q Where did you see him? In room X? or in room R, or in the doorway D?

A In the group in the corridor.

Q He saw him in a group in the corridor of room R between doors A and D. Indicate approximately where it was.

A In the group that was here (indicating). He might have been here (indicating), or he might have been here (indicating).

Q Well, let's mark this one here "T-12", with the understanding he was standing in a group somewhere in the vicinity of the

A placed I have marked "T-12".
"T-12".

Q Did you ever see that man any other place that evening?

A It is probable that I saw him later, after, in here (indicating).

Q In room X?

A Yes, sir.

Q Do you have any recollection at this time of seeing him in room X?

A I say it is probable, it is possible, that I did see him.

Q I understand you to say it is possible you did see him or it is even probable you did see him, but I am asking you if you have any definite recollection at this time of seeing him in room X?

A He was with the group at the point "T-12", and after they entered I cannot positively state whether he was here (indicating, here (indicating), or here (indicating).

Q You can positively state that you saw him some where in room X, is that right?

A Yes, sir.

Q All right. Now did you see him anyplace else that evening?

A No, I don't remember.

Q All right.

Defense: By the way, I would like the Court to know the picture we are referring to.

Defense Counsel exhibits picture marked Defense Exhibit E for Identification to the Court.

Q Now how tall a man is Townsell, by the way?

A A little taller than me.

Q Oh, I am sorry. Do you know who I mean when I saw Townsell?
A No, he says, except that I have just mentioned the name to him.

Q Is this man Townsell (exhibiting photograph marked Defense Exhibit E for Identification to witness)?

A As I read it, I don't read Townsell; I read Tonesell.

Defense: The man speaks better English than I do.

Q Well, how tall is this Townsell as shown in Exhibit E?

A He is taller than me, a little taller than me.

Q Let's show over here on the pole how tall?

A (Witness indicates on pole). He could be about this height.

Q Well, you think he was about five feet, nine inches. And

how heavy is he?

A His normal weight, he could be my weight or could be a pound more than me or a pound less than me. Thin.

Q And your weight is 170 pounds?

A With that scale I weigh that much. I don't know how much I weigh.

Q Well, do you know how much you weigh under the metric system?

A Four years ago I weighed 70 kilos. I don't know how much I weigh now.

Defense: I probably think he is eating better than he was four years ago.

Interpreter: I don't know what the ratio was to pounds.

Q Haven't you ever been weighed since you have been at Fort Lawton other than on the one time at the PX?

A No, sir.

Q Oh, I forgot to ask you this. I forgot to ask you if the man shown in Defense Exhibit A -- how tall was he? Show us on the pole.

President: Exhibit A, did you say?

Defense: Yes, if the Court please.

Interpreter: He would like to see the photograph again.

Defense: Oh, be glad to have him see it. I am not covering it up this time, counsel.

A A little taller than me.

Q Well, let's go over on the pole and indicate about how tall, (Witness indicates on pole.). Could be about this.

Q Five feet, ten inches. How heavy a man is he?

A He is heavier than I am.

Q Well, about how much heavier would you think he was than you?

A You want to know the pounds?

Q Yes. That is the only thing I understand.

A About 10 pounds more than me -- could be.

Q And how was that man dressed on the night of August 14th?

Law Member: That man is whom?

Defense: The man we were last talking about.

Law Member: You are back to A now?

Defense: Yes, and that is Richard Barber.

A I remember that he was dressed in fatigues, and on his head he had a helmet.

Q He had a helmet?

A Yes, sir.

Q And dressed in fatigues?

A Yes, sir.

Q Now, the man shown in Defense Exhibit E for Identification, Booker Townsell, how was he dressed that evening?

A I don't remember with much exactness how this man was dressed as I do the one previous, but probably he also was in fatigues.

Defense: Well, if the Court please, --

Trial Judge Advocate: I join in that.

Law Member: "Probably also was in fatigues" may go out.

Q You don't know how Booker Townsell was dressed?

A Booker Townsell was the last one you showed me?

Q That's right.

A I am not sure as I was with the first man.

Q Did he have a head covering of any kind?

A He did have some sort of a head covering.

Defense: If the Court please, I am going to change to another subject a little bit.

President: The Court will take a recess and reconvene at ten minutes of 11:00.

The Court thereupon recessed at 10:35 a.m., and reconvened at 10:50 a.m., 23 November 1944.

President: Is the prosecution ready?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready?

Defense: Yes, sir, if the Court please.

President: The Court will come to order.

Trial Judge Advocate: Let the record show each of the accused is present, the members of the Court, and the personnel representing the accused and the personnel of the prosecution are present.

The interpreter and reporter were also present.

President: Let's bring the witness in.

Trial Judge Advocate: He is being brought in.

Defense: At this time I want to offer any exhibits which have been marked and which remain unoffered.

Law Member: There is only E.

Defense: I offer Exhibit E.

Law Member: Defense Exhibit E for Identification is received in evidence as Defense Exhibit E.

The photograph of B. Townsell, previously marked Defense Exhibit E for Identification, is received in evidence and marked Defense Exhibit E.

Sergeant Major Augusto Todde, 28th Italian Quartermaster Service Company, a witness for the prosecution, took the witness stand and testified further through the interpreter, as follows:

CROSS EXAMINATION

Questions by Defense:

Q Sergeant Todde, about when was it that you made your first identification of colored soldiers after the night of August 14th?

A About 15 days later.

Q About 15 days later. And how many men did you identify at that time?

A I don't remember exactly the number.

Q Well, can you give us approximately the number of men you identified at that time?

A Thirteen or fourteen. I don't exactly remember.

Q Sergeant Todde, handing you what has been marked Defense Exhibit F for Identification, I will ask you if you ever saw this man before you came into this court room?

A No, sir.

Q You have no recollection of seeing this man before you came into this court room?

A I saw this man the night of August 14th.

Q You saw this man the night of August 14th, is that correct?

A Yes, sir.

Q Did you identify him later in the show-up at Camp Jordan?

A No, sir.

Q You never identified him at Camp Jordan?

A No, sir.

Q Did you ever identify him at anytime prior to coming into this court room?

A No, sir.

Defense: The picture of L. Stewart, if the Court please, I offer it in evidence.

Trial Judge Advocate: That is Leslie Stewart.

Defense: Leslie Stewart, yes.

Law Member: Defense Exhibit F for Identification is received in evidence as Defense Exhibit F. It is the picture of Leslie Stewart.

The photograph of Leslie Stewart, previously marked Defense Exhibit F for Identification, is marked Defense Exhibit F and received in evidence.

Defense: I have no further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant Todde, there were two men whose pictures Defense Counsel showed you and had you compare. One of them was Defense Exhibit C of John Hamilton, and the other one was Defense Exhibit D of Jefferson Green, and he took you over here and had you talk about the appearance of the man whose picture is on Defense Exhibit D, Jefferson Green. Look at that picture. The man has since moved his position; he is not where he was at that time?

A He was in the second chair.

Q Of what row?

A The first row.

Q Is he still at that same position now?

A No, sir.

Q Come with me and see if you can find him.

A (Witness makes an inspection of the accused seated in the court room). Yes, sir.

Q All right, point him out.

A (Witness points to one of the accused.)

Q This man right here (indicating one of the accused)?

A Yes, sir.

Trial Judge Advocate: Will you stipulate that was the man?

Defense: No.

Q Well, that was, or was this the man?
A He is the man who was seated at the second seat and the man who corresponds to the photograph.

Law Member: What is the number of the photograph?

Trial Judge Advocate: It is Defense Exhibit D.

Q Now the soldier who appears in Defense Exhibit C, will you see if you can find him among the accused?
A He is the second man seated in the second row.

Q All right. Is this the man you have reference to (indicating one of the accused)?
A Yes, sir.

Q And you say it is the same man who appears on Defense Exhibit C?
A Yes, sir.

Trial Judge Advocate: I would like for the Court to look at those photographs.

The Trial Judge Advocate then handed the two photographs referred to to the members of the Court.

Q To make certain, is this the man -- is the man I am pointing to the last one you identified?
A Yes, sir.

Q Do you remember what name was on the photograph?
A It begins with an H, but I don't remember what.

Q And point again, now, to the first man.
A (Witness points to one of the accused).

Q This man (indicating one of the accused)?
A Yes, sir.

Trial Judge Advocate: Now, would the Court care to have either of these two men who have just been pointed to stand up?

Law Member: Subject to objection by any member of the Court, the Court feels it is not necessary.

Trial Judge Advocate: Feels what?

Law Member: It is not necessary.

Q All right, have a seat, Sergeant. Now you have told the Court about Major Beeks taking some photographs and exhibiting them to you. State whether or not Major Beeks at any time brought any colored soldiers before you in person for identification?
A No, sir.

Q State whether or not the Defense Counsel, Major Beeks, exhibited photographs to you and, if so, the approximate number and the manner that was used in exhibiting them to you?

A He showed me about 30 or 35. He showed them to me, placing his finger on the -- keeping his finger on the name. He asked me if I recognized this man. If I said, answered, yes or no, then he wanted to know where I saw him and how I saw him. Then he showed me those photographs of the men whom I said no, I had not seen. Do you want to know anything else?

Q Was or not the photograph of one individual sometimes exhibited by Major Beeks more than once?

A Yes, sir.

Q State whether or not you selected from Major Beeks' group of photographs the same Negro soldiers whom you have identified to the Court?

A Yes, sir.

Trial Judge Advocate: The prosecution has no further questions.

Defense: May I have that last question?

(Question read by reporter)

RECROSS EXAMINATION

Questions by Defense:

Q Showing you Defense Exhibit F, I showed you that photograph at Mount Rainier, didn't I?

A I don't remember if he showed it to me.

Q Didn't I show you this photograph at Mount Rainier and say, "Here is a picture of Leslie Stewart; have you ever seen him"?

A He did not tell me the name.

Q You are positive, I didn't tell you the name?

A When he was showing me the photographs he kept his finger on the name.

Q I ask him to recall if it isn't a fact that some of the first photographs that I showed him I referred to them by number and that some of the later photographs I referred to by name?

A He was mentioning a number and a Captain wrote the number down. This I remember. After I had said either yes or no when he showed me the photographs, then he would mention the name to the Captain and the Captain would write it. I understood that was the name he was mentioning while I was talking.

Q Didn't I show you this picture, which has been marked Defense Exhibit F, and ask you if you have ever seen this man before, to which you replied: No, sir?

A It is probable.

Q Well, would you say that I didn't so ask you and you didn't say that you had never seen that man before?

A I don't remember all the photographs he showed me. I don't remember the face of all the photographs he showed me.

Q Well, I want to know. Do you want this Court to understand that I didn't show you this photograph, which has been marked Defense Exhibit F, and ask you if you had ever seen this man before, to which you replied: "No, sir"?

A I do not want the Court to understand this, because I might be mistaken.

Q Well, do you deny that you had told me that you had never seen the man shown in Defense Exhibit F before?

A If he showed me this photograph at Mount Rainier, I answered I probably -- probably that he showed it to me, but I can't remember.

Defense: That is all.

Interpreter: He wants me to say that he says he showed it to me, and naturally I have to believe him.

Trial Judge Advocate: No, you don't have to believe him, because there could be a mistake about it.

Defense: We will show it by other proof. He is denying it.

Trial Judge Advocate: Would you mind letting me have the photographs of Wallace Wooden, Lee Dixon, Johnnie Ceaser, Willie Prevost, Roy Montgomery and Richard Sutliff?

Defense: You have your pictures of your own.

Trial Judge Advocate: I would like to use the photographs you are using. I don't have any of that kind.

Defense: I don't think, if the Court please, the defense has to produce things that aren't in evidence for the prosecution, to assist the prosecution.

Trial Judge Advocate: If the Court please, all I am asking for is that these be made available for the examination of this witness.

Defense: I am objecting.

Law Member: If the Defense Counsel doesn't want to show them, I will sustain him.

Defense: He has pictures.

Trial Judge Advocate: I don't have any pictures like these, that is, the same type of pictures as just has been used, and that is the only reason I am asking for them.

Law Member: Are these the pictures you showed to the witness at the time you interviewed him?

Defense: If the Court please, they are not pictures that I used in examination at all, on cross examination --

Law Member: I didn't ask you that, Major. I asked you if these are the pictures you used when you questioned this witness prior to the trial.

Defense: I don't think I am called upon to make that disclosure. If the Court insists, I will answer.

Law Member: I won't ask you to disclose that. Are Exhibits A, B, C, D, E and F the exact pictures you showed to the witness on your prior examination?

Defense: Yes.

Law Member: Objection sustained.

Trial Judge Advocate: All right. You may have your pictures, Major Beeks.

Defense: Thank you, Colonel.

Trial Judge Advocate: Would you mind just letting me look at them?

Defense: If you would feel better, I will

Trial Judge Advocate: It will make me feel a lot better.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q I will ask you to state to the Court whether or not Major Beeks exhibited to you a photograph of this person, which was similar to the photograph I am exhibiting to you except it was very much smaller?

A Yes, sir.

Trial Judge Advocate: I offer this in evidence, if the Court please.

Law Member: If there is no objection, it is received as Prosecution Exhibit 21.

A photograph of Willie Prevost is marked Prosecution Exhibit 21 and received in evidence.

Q I will ask you to examine each of these other photographs I am passing to you and ask you if Major Beeks exhibited these photographs to you, and whether they are the same type of photographs except that his were very much smaller?

A None of these are those which the Major showed me, this moment.

Q No, not this moment, but I am talking about -- I know he didn't show them to you during this trial, but did he show them to you when he examined you over at Mount Rainier?

A Yes, sir.

Q All right.

Trial Judge Advocate: I offer each of these.

Law Member: Let's have them straight. 21 is what?

Trial Judge Advocate: 21 is Willie Prevost; 22 is Wallace Wooden; 23 is Johnnie Ceaser; 24 is Lee Dixon; and 25 is Richard Sutliff.

A photograph of Wallace Wooden is marked Prosecution Exhibit 22, a photograph of Johnnie Ceaser is marked Prosecution Exhibit 23, a photograph of Lee Dixon is marked Prosecution Exhibit 24, and a photograph of Richard Sutliff is marked Prosecution Exhibit 25.

Q Now I hand you Prosecution Exhibits 17, 21, 22, 23, 24 and 25 and ask you whether or not they are photographs of persons whom you have identified to this Court as having seen on the evening of August 14, 1944?

Defense: If the Court please, I think it would be more proper for the witness to testify as to what they are.

Law Member: Objection overruled. I didn't hear any objection, but I don't see why the question as asked is not proper.

A Yes, sir.

Trial Judge Advocate: The prosecution has no further questions, if the Court please.

Defense: I have no further questions.

President: Any questions by the Court?

EXAMINATION BY THE COURT

Questions by Law Member:

Q Sergeant, I show you Defense Exhibit E and ask you if you will again tell the Court where in and about building 713, the orderly room, you saw this man on the night of August 14?

A 713 is the building number?

Q Yes, sir.

A Inside 713, which is the orderly room.

Q And where inside?

A In room X.

Q Did you see him anyother place other than in room X?

A It is possible first in room R.

Law Member: That is all.

Questions by President:

Q Sergeant Todde, what did you do in divilian life?

A He was in a company having to do with tourists, a tourist company.

Q What were your duties in the tourist company?

A My principal occupation was the organization, the collaboration --

Prosecution Interpreter: He said they have radios on these buses. It is a radio bus; have a radio in each bus.

A -- (continuing) While you are traveling he contacts them from the place, standing still. In other words, contacting between radio stations, one which was moving and the other which was standing still -- many that were moving and one that was at a set place. I organized this type of service. There were 400 or 500 tourists that would go to a certain place and I would organize the groups. At a time there was no tourist trade in Tripoli my duties were as accountant, or correspondence, or other types of office work in this large society I was working in.

Q Have you ever had any experience or training in identifying people?

A No, sir.

Q How old are you, Sergeant Todde?

A 36.

President: Any further questions?

Questions by Law Member:

Q He has told us that in his experience in the army he was engaged in radio intelligence.

A That was always my principal occupation; also under military.

Q Will you ask him to explain more fully to the Court what his duties were in radio intelligence?

A There too it was the same thing. It was organizing the service of radio -- radio service. Organizing radio work among many stations. At the time that a radio station was recently

set up to correspond with other radio stations, I would go and establish the communications between the two. I know this type of work very well.

President: Any further questions?

Trial Judge Advocate: Prosecution has no further questions. Does the Defense have any?

Defense: Defense has none.

President: There appear to be none. The witness will be excused.

There being no further questions, the witness was excused and withdrew.

Law Member: The photographs of Wallace Wooden, Johnnie Ceaser, Lee Dixon and Richard Sutliff are received in evidence as Prosecution Exhibits 22, 23, 24 and 25 in that order.

Private Nicola Correa, 28th Italian Quartermaster Service Company, a witness for the prosecution, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q State your name.

A Nicola Correa.

Q What is your grade?

A Private.

Q What is your organization?

A 28th Italian Quartermaster Service Company.

Q Where are you now stationed?

A Tacoma.

Q Is that the Mount Rainier Ordnance Depot?

A Yes.

Q- Where were you stationed on August 14, 1944?

A At Fort Lawton.

Q How old are you?

A 23.

Q Do you recall an unusual incident occurring on August 14, 1944, at Fort Lawton?

A Yes, sir.

Q Where were you when you had first knowledge of it?

A In my barracks.

Q What is the number of the barracks?
A 708.

Q What is the first thing you knew concerning this incident?
A Throwing of stones on the barracks.

Q On what part of the barracks were the stones thrown?
A On the barracks that I was in, 708.

Q What part of barracks 708?
A On the top part.

Q What did you do when that happened?
A I got up.

Q You had been in bed?
A Yes, sir.

Q Did you dress?
A No.

Q What did you do?
A I got up to see what was happening.

Q Then where did you go, if anyplace?
A In front of the door.

Q Inside or outside the door?
A Directly in front of the door.

Q Inside the barracks or outside the barracks?
A Standing in the doorway.

Q What happened then?
A Then they came and they grabbed me and they made me go downstairs.

Q Who do you mean by they?
A The Negroes.

Q Negro soldiers?
A Negro soldiers.

Q How many Negro soldiers?
A There were quite a few. I didn't count how many there were, but there were quite a few.

Q Did they have anything in their hands?
A They had clubs and they had a rifle -- one had a rifle.

Q What did these Negro soldiers do with you, if anything?
A One hit me with a baseball bat.

Q On what part of the body did he strike you?
A On the head, and hit me in back here with a club (indicating).

Q Did you see the club?

A Yes.

Q Describe it.

A A club about this size (illustrating).

Q Indicating a foot and a half long.

Defense: I couldn't see. Yes, I think so. About 18 inches.

Q Where did they take you?

A They pulled me away as they were hitting me with clubs.

Q Well, how far away did they pull you?

A About 12 feet.

Interpreter: Wait a minute. I want to get that measuring straight.

A 9 or 12 feet.

Q Away from barracks 708?

A Yes, sir.

Q Towards what other building, if any?

A Towards their mess hall.

Q Ask the witness to step over here. Now, referring to Prosecution Exhibit No. 2, this is 708, your barracks. Now where was the entrance that you came out of?

A Here (indicating).

Q Pointing to the northeasterly end of the barracks 708.

Defense: You are asking me to stipulate?

Assistant Trial Judge Advocate: I have already indicated this is Prosecution Exhibit 2 we are talking about.

Q Building 700 on Prosecution Exhibit 2 is a mess hall, 758th Port Company mess hall.

Defense: 578th, I think, is right.

Q Or 578th. Now in which direction did these soldiers take you after you came out of the entrance of 708?

A In this direction (indicating).

Law Member: Doesn't mean a thing.

Q Indicating from the northeast end of building 708 to the westerly end of building 700.

President: Make that toward instead of to.

Q Toward the westerly end of building 700. How far between those two buildings did they take you?

A Here is where they grabbed me (indicating), and they dragged me to about here (indicating), where they threw me on the ground and they hit me with clubs.

Law Member: Have him mark, Counsel, on the map where he said he was at the time he was hit and knocked on the ground.

Q Will you place the letter "C" on the map at the point where you were on the ground?

A He can't measure it exactly on the map. (Witness indicates as requested.)

Q That indicates approximately where you were on the ground?

Law Member: What are you referring to with "that".

Q The "C" he placed there indicates approximately where you were on the ground?

A Yes, sir.

Q What happened after that? (To interpreter) Tell him to take it slow so we get it all.

A I fell to the ground. After, they grabbed me, one from over here (Indicating) and one from here (indicating).

Q Indicating the right and left arms approximately at the elbow.
A Both arms. They were all around, surrounding me. Then they dragged me about two or three more steps, continuing to club me, continuing to strike me.

Q With what?

A With wood and everything. Here I was hurt (indicating) --

Q Indicating the right hip?

A They hit me here (indicating), they hit me here (indicating), they hit me here (indicating) -- they hit me all over. Even though I was injured, I went this way (indicating), I freed myself and I ran inside the latrine.

Q The latrine is indicated on Prosecution Exhibit 2 as building 712.

A I ran from here (indicating) right up to where the door of the latrine is.

Q Indicating from the letter "C", which the witness has placed on the map, to the door of the latrine which he indicates as in the center of the south wall of the latrine.

Law Member: Building 712.

Assistant Trial Judge Advocate: Building 712.

A Blood was oozing from my head, and from being clubbed here (indicating) -- with a stab that was given to me here (indicating).

Law Member: Now, he said, "here". That means nothing.

Assistant Trial Judge Advocate: I understand that, sir.

Law Member: He is indicating something, so whenever he does that will you please have him indicate the back, or nose, or whatever it is.

Q Where were you stabbed?

A Here (Indicating), and here they split my head with a bang.

Q When you say, "here", do you mean your back?

Defense: I will stipulate he is pointing to the small of the back.

Law Member: And to the head.

Defense: And to the head.

Trial Judge Advocate: The back of the head.

Defense: That's right.

Q What happened after you got to the latrine?

A A Negro was still following me from behind with a dagger.

Q Was he walking or was he running?

A He was running and so was I. I arrived at the door of the latrine and Sidoti, an Italian soldier, was there.

Q Sidoti, an Italian soldier?

A Yes, sir.

Q What happened then?

A He saw the negro who was following me from behind with the knife.

Q What did you do then, or what did Sidoti do then?

A I told Sidoti I was dying. Sidoti had a wooden club in his hand and as the colored soldier was coming after me, still striking at me with the knife or dagger, Sidoti impeded his entrance into the latrine by clubbing him. He did not allow him to enter.

Q Did you enter the latrine?

A Yes, sir.

Q How long did you stay there?

A Seven or eight minutes, because later they came with stones in the latrine.

Q Who do you mean by they?

A Negroes.

Q What did you do then?

A There was another door here (indicating) from which I exited --

Q Wait a minute. Here. Indicating the northeasterly corner of the latrine.

A From this door I ran under barracks 711.

Q Did you stay there all the time?

A After it was all over the ambulance came and got me. I shouted and all my friends came and picked me up.

Q You were still under barracks 711 when they picked you up?

A When I heard machines I went out.

President: The Court will recess until 1:30 this afternoon, and on reconvening will reconvene until 3:00 o'clock, when it will recess for the rest of the day. This is done in order that the Court and the accused may take advantage of the holiday dinner that is being served today.

The Court thereupon recessed at 12:00 o'clock noon, and reconvened at 1:30 p.m., 23 November 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: Defense is ready, sir.

President: The court will come to order.

A roll call of the accused, seated in the court room, was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each accused is present, that all members of the Court are present, and that the personnel representing the accused is present, as well as the personnel representing the prosecution.

The interpreter and reporter were also present.

Private Nicola Correa, 28th Italian Quartermaster Service Company, a witness for the prosecution, again took the witness stand and testified further through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q Private Correa, you are reminded you are still under oath,
A Yes, sir.

Q Now, will you please rise and examine carefully the negro soldiers who are seated in the court and point out, if you

can, any Negro soldier that you recognize as being present in the Italian area the night of August 14, 1944.

A (Witness inspects accused, seated in the court room, and points to one of the accused.)

Q Is this the man you pointed to (indicating one of the accused)?

A Yes, sir.

Q The first man in the first row.

Law Member: Will the first man in the first row down there please stand up and give his name.

The individual indicated by the witness then arose and announced his name, as follows: Technician 4th grade John S. Brown.

Law Member: John S. Brown.

Q Now do you see any other soldiers whom you recognize as being present that night?

A I don't see any.

Q In what part of the Italian area did you see the man that you pointed out?

A When they grabbed me there.

Q Will you step over to Prosecution Exhibit No. 2 and point out to the Court where you saw the man you identified.

A When I came out of the barracks the light was on here (indicating), and that is where I saw him. Him and the others were the ones that grabbed me.

Q When you say "here", you indicate the northeasterly end of barracks 708?

A Yes, sir.

Q Be seated. What did you see this man whom you have identified do?

A He was hitting me, together with the others.

Q With what did he hit you?

A With wood, pieces of wood.

Q Did you ever identify that man before today?

A Yes.

Q How many times?

A They let me see him two times.

Q Where were you at both of those times?

A One time I saw him at a camp where I recognized him; the other time at Fort Lawton here.

Q Do you know the name of that camp?

A No.

Q How many Negro soldiers were present when you identified this man?

A About 200.

Q Have you ever seen a picture of this man?

A Yes, I have seen it.

Q How many times?

A A couple of times.

Q Was this man's picture alone or was it amongst others?

A There were others.

Q About how many others?

A I haven't counted the others.

Q Do you have an idea how many there were?

A I saw about 30.

Q Did you pick out the picture of the man whom you have identified today from amongst the others?

A Yes.

Q Did you pick out any other pictures to identify?

Defense: Identify who? I submit the question is indefinite.

Law Member: To identify.

Defense: Identify who? Other men or what? I don't know.

Law Member: I think it speaks for itself. To pick out other pictures to identify.

A I only recognized him. No.

Q Have you ever identified any other Negroes at any other show-up other than the one you identified today?

A No.

Q Were you taken to a hospital as a result of your injuries?

A Yes, sir.

Q How long did you remain in the hospital?

A Fifteen days.

Assistant Trial Judge Advocate: Prosecution has no further questions at this time.

CROSS EXAMINATION

Questions by Defense:

Q I show you a picture, which I will ask to be marked as Defense Exhibit G --

(Photograph is marked Defense Exhibit G for Identification)

Q --(Continuing) and ask if you ever saw this man before?

Trial Judge Advocate: May I see it?

Defense: I will show you.

Trial Judge Advocate: I think I am entitled to see it before you examine.

A No.

Law Member: Are you offering it?

Defense: No, I am not.

Trial Judge Advocate: I think the Court is entitled to see who is presented as an exhibit.

Defense: I don't think the Court is entitled to see anything until it is in evidence.

Trial Judge Advocate: I submit the Court has a right to know what picture is presented to the witness as an exhibit.

Law Member: If the Major doesn't offer it, you can, Colonel.

Trial Judge Advocate: May I have the exhibit number?

Defense: Exhibit G.

Q How long a period of time was it that you came out of your barracks after you first heard stones thrown against it?

A A few minutes past.

Q Approximately how many minutes?

A A few minutes. Just during the time I got up and saw the others running around the barracks.

Q And at the time you came out of your barracks was the light still burning or had it been broken out?

A Still was light.

Q Still was burning. Were there lights on inside your barracks?

A When I ran out they were still on.

Q The light inside the barracks?

A Yes, the inside lights were on.

Q They had never been turned out?

A When?

Q Prior to the time that he heard bricks or stones hitting the barracks.

A They were on.

- Q Well, were you frightened or not frightened when you heard the stones hitting your barracks?
A I didn't know what was happening.
- Q What did you assume was happening at that time?
A I did not know what was happening at the time, so I went out to see what was happening, and as soon as I got out to the door they grabbed me.
- Q You went out before anybody entered your barracks?
A I don't know if they came in through the other door. I don't know that.
- Q How many men grabbed you originally?
A About ten or twelve.
- Q Ten or twelve grabbed you?
A Yes.
- Q Ten or twelve men all had their hands on you at one time?
A Yes.
- Q And were you standing up all this time?
A I fell as soon as I was hurt, or I was given a blow in the back. I immediately fell down.
- Q Did you recognize this man you identified before you were knocked down or afterwards?
A Before I fell down.
- Q Before you fell down. Well, come over here a moment. Is there a little stoop or porch in front of your barracks?
A Yes.
- Q And how many steps to that?
A Three or four. I never counted.
- Q Were you on the porch at the time you were originally grabbed by the colored soldiers?
A That was before?
- Q I asked him if he was on the porch at the time he was first grabbed by the colored soldiers.
A There is a door here (indicating) and right outside the door there is a square. From that square there is steps going down. As soon as I came out here they grabbed me, and they were saying, "come on; let's go, boys."
- Q You understand English, don't you?

Interpreter: I did not understand. He was saying, "Come on boys, come on boys, let's go."

Law Member: Before you bring that up, Major, let's get the answer to the last question. Did I understand as soon as he got out on the square, which he indicated was the porch,

he was grabbed.

The witness: Yes.

Law Member: And men were shouting what?

The Witness: "Come on, let's go". After that I don't know what else they said.

Q Well, what else did you hear the men say around there that evening?

A I heard them speaking a lot, but I didn't understand anything.

Q The man you have identified back here, did you hear him say anything?

A Yes.

Q What did you hear him say?

A He was saying, "Come on, let's go" together with the rest. He was next to me and he also grabbed at me with his hands, after which they all grabbed me.

Q How much English do you understand?

A Very little, I can't speak English.

Q (To Witness direct) Can you understand English?

A (By Witness direct) No.

Q (To Witness direct) What is your name?

A (By Witness direct) Correa.

Q (To Witness direct) Where were you born?

Interpreter: He says he doesn't understand.

Q (To Witness direct) You don't understand what I am saying?

Interpreter: He says he doesn't understand.

Q (To Witness direct) And you don't understand what I am saying?

Trial Judge Advocate: Let the record show that Counsel is asking questions now that the Witness can't answer because he says he doesn't understand, and the reason is because they aren't being interpreted.

Defense: I am just trying to determine whether he wants to or doesn't want to.

Trial Judge Advocate: No, but I certainly don't want the record to show he was asked a question, "Where were you born?" and the Witness says, "I don't understand."

Law Member: Well, I assume the stenographer is indicating that the questions were asked of the Witness direct in English, and not answered, but were answered through the Lieutenant who

is interpreting. That is correct, isn't it?

Defense: Partially, if the Court please. I did ask him two questions in English that he did answer.

Law Member: I didn't hear them.

Defense: Well, I asked him, in the first place, if he understood English, and he said no, and I asked him his name and he gave me his name.

Law Member: No, he didn't.

Defense: I will ask the interpreter if he didn't.

Assistant Trial Judge Advocate: The interpreter asked him and he said "correa".

Law Member: I heard the interpreter ask him. In English the Witness said, "Come on, let's go". That was in English.

Defense: Well, I assume that the Court will have no objection to the record showing that the Witness did say that he heard some of the colored soldiers exclaim in English, "Come on, let's go"?

Law Member: That is correct, and he repeated it on the witness stand, in English, giving the answer to the interpreter. Major, would you prefer to try to examine this man in English? You are at liberty to do so if you don't want the interpreter.

Defense: Well, I will proceed through the interpreter at least for the time being.

Law Member: I don't want that raised as an objection and as being overruled by the Law Member. If you feel sure this man can talk English sufficiently for you to do so, you are at liberty to do so.

Defense: What is the question the Court is asking me?

Law Member: If you are willing to proceed without the interpreter. If you, in your own mind, believe this man can talk English, why, proceed in English.

Defense: Does the Court want me to answer something?

Law Member: I want to know if there is any objection now by you to this Witness being examined through an interpreter?

Defense: For the time being, no.

Law Member: All right.

Q Now, on this porch that you spoke of in front of the barracks,

Q What is the greatest number of men that you saw on that porch at the time you were originally grabbed?
A There were considerable, but I saw him first because he was right in front of me. There were some, a few, that were in front of the barracks there.

Q Well, that door in front of your barracks swings outward or inward?

A It opens toward the outside.

Q Swings toward the outside. You opened that door and went outside under the porch, didn't you?

A The door was already opened.

Q The door was already opened. At the time you went outside were there any colored soldiers in evidence on the little porch in front of your barracks?

A They were on the sides of this porch. There is a coal box to the rear of it, from which direction the colored soldiers were coming, and some of them were saying, "Come on, let's go", while others were going bang.

Q Try to get an swer to this question --

Law Member: Do you want that stricken out as not responsive?

Defense: Yes, please.

Law Member: That last answer goes out as not responsive.

Q Whereabouts in barracks 708 was your bunk?

A On this side (indicating).

Q All right. You were on the side closest to barracks 709 and on the end closest to Lawton Road. Now, at the time you heard these stones falling against your barracks were you in bed?

A Yes, in bed.

Q Had you been asleep?

A Yes, I was sleeping.

Q What time had you gone to bed?

A At the time we always go to bed. We have an established time to go to bed.

Q What was that time?

A The hour that everybody knows; the hour that the soldier has to go to bed.

Law Member: What time is that?

The Witness: I don't remember what time we had to go to bed.

Q Well, had you heard taps that evening?

A Yes.

Q That was before the boulders struck the building?

A Yes. By this time it was quiet and most of us had already gone to bed by this time.

Q Well, when you hear taps blown you put your lights out in your barracks, don't you?

A Yes, you know very well that you put out the lights and go to sleep, because officers come around with flashlights to be sure nobody makes any errors.

Q Had you gone to sleep at any time before this attack?

A Yes, before.

Q And what awakened you.

Interpreter: What did you say, Major?

Defense: I asked him if he had gone to sleep before the time of the attack.

Interpreter: You wanted to know whether he was in bed or was asleep?

Defense: Asleep.

A Yes.

Q What awakened you?

A I awoke because all my friends was in the progress of getting up, running around. There was these stones being thrown at the barracks and pieces of window glass were coming onto the beds.

Q Did you get up out of bed?

A Yes, I got up.

Q And when you first got up what did you do?

A When I got up the other members of the barracks were putting on the lights, those that had gotten up before me, and they all went out and I went out too to see what was happening.

Q Were you the first man out the door?

A No.

Q What happened to the other men that went out the door, if you know?

A They all received several blows.

Q Now, as you looked towards the door and were going towards the door of your barracks, could you see anyone struck outside that door?

A No, I didn't see anybody have blows, receive blows.

Q All right. As you started towards the door in the vicinity

of your bunk could you see through the open door colored soldiers standing on the porch? I can tell from the Witness' gestures --

A Then you haven't understood anything. I said the square, and here (indicating), and they were here (indicating), and they were (indicating), and they were all bending down this way (indicating) and had helmets on their heads.

Defense: (To interpreter) Will you tell the Witness to quit trying to argue and concentrate on answering the questions.

Law Member: Haven't been any arguments. Don't make those remarks.

Defense: The Witness says he doesn't understand anything I say to him. I asked this Witness one simple question; as he looked through the door if he could see colored soldiers standing on the porch.

Law Member: All right. Let's have that answer alone. As he was approaching the door from the inside did he see colored soldiers on the outside.

Interpreter: I suggest, if it please the Court, when they do ask a question like this they ask for the man either to answer yes or no, because they will all go off on a tangent. That is evident.

Trial Judge Advocate: That wouldn't be a proper instruction where an explanation is necessary.

Interpreter: I mean on this one.

Law Member: Ask him this question. As he was approaching the door from the inside of the barracks could he see colored soldiers outside that door?

A The Negroes were outside the door. How come I couldn't see them. Of course, I could.

Law Member: Of course, he could?

Interpreter: Yes.

Defense: (To interpreter) What is that about how come I couldn't see them?

Interpreter: That is an Italian expression. Naturally he saw them. How come I could? Of course, I could.

Q How many colored soldiers did you see on the porch as you looked through the door as you were approaching it?

A There was quite a few.

Q Well, was there fifteen?

A I didn't go count them.

Q Now, ask him for an answer to my question, will you?
A I didn't count them.

Q Was there as many as fifteen?
A There could have been even more than that many.

Q On the porch?
A Not on the porch; in front of it.

Q Well, I will go back and start all over again and ask him the question I asked him fifteen minutes ago. How many colored soldiers were there on the porch?
A There were some there but I didn't count them.

Q How many were there?
A There couldn't have been fifteen soldiers on the porch. Only this much area (indicating). There couldn't have been fifteen.

Law Member: When he said this much area, how much is it?

Interpreter: It was small like this (indicating); there couldn't have been fifteen people fit on it, and he motions from here to here (indicating).

Trial Judge Advocate: About four feet, Major?

Defense: I don't know.

Trial Judge Advocate: Well, anything you say will be all right.

Defense: I don't know. I will be honest with you. I don't know what he has indicated here.

Law Member: Witness, how wide is the porch? It doesn't take that long to say four, five or six feet.

Interpreter: He is telling me --

Law Member: I want him to answer that question. How wide is the porch?

The Witness: (Witness indicates)

Law Member: Now get together and stipulate.

Defense: I will stipulate he has indicated a space about four feet square.

Law Member: Four feet square is the porch.

Trial Judge Advocate: All right.

Q The man you identified back here, when you first saw him was he on the porch or somewhere else?
A He was in the act of coming up on the porch from the steps.

Q Up on the porch. Was there anyone coming up on the porch with him?

A There were many.

Q Well, he says there were many. Were there many alongside of him, behind him or in front of him?

A On the right.

Q On his right.

Interpreter: You are talking about the identified man now?

Defense: That's right.

Q On his right. Were they on the stairs on his right?

A He was the only one climbing the stairs; the rest were behind him.

Q The rest were behind him. How was that man dressed?

A Field jacket with the grade of a sergeant, and a helmet on his head.

Q Now, I wish you would show us over on this pole how tall was this man?

A I did not pick up a ruler to measure it.

Q You saw the man, didn't you, through the door?

A Yes, I saw him.

Q All right. You give us your recollection of how tall he was?

A He is right here, if you want to measure him. I don't know why you want me to show you.

Defense: It just shows this Witness is a smart aleck.

Law Member: No, I don't believe that.

Trial Judge Advocate: It is just evidence he just doesn't understand. Probably his first experience in Court. If it please the Court, I think if Counsel doesn't mind I might make the suggestion you tell him you are just after his estimate of his idea. I think he will understand.

Defense: If you can convey that to him, Counsel, I would be very happy.

Law Member: I think it would be very fair to tell him that, all you want was an approximation. Now, I want to ask a question for general information. Do the Italian people use feet and inches?

Interpreter: No, they don't.

Law Member: What do they use?

Interpreter: They use the metric rule.

Defense: I am not asking for feet or inches, or meters. I just want him to show on this pole about his best estimation of how tall that man was.

Law Member: (To interpreter) Ask him to do that now.

A Like this (indicating).

Q Put his finger up again.

A (Witness indicates on pole.)

Q About five feet ten. And how heavy was this man?

Law Member: Would you give me the measurement on that?

Defense: Five feet ten inches we agreed to. If the Court please, there seems to be considerable merriment going on here.

Law Member: The trouble is the interpreters are the only ones that get it.

Interpreter: He said, "By the blessed St. Mary, I don't know."

Defense: Well, I think, if the Court please --

Law Member: I guess that is an answer that --

A By the blessed St. Mary, I don't know.

Defense: I think laughing at this Witness we are only encouraging him in this sort of thing.

Trial Judge Advocate: No, I don't think so, Major. He has, I think, been very informative, tried to do everything he possibly can. I don't think you can find fault with his efforts.

Defense: I know very well you didn't have near the difficulty getting information I am having.

Trial Judge Advocate: Major, I didn't ask some of the questions you are asking either.

Law Member: Ask him for his best judgement, if he knows, how much in pounds, kilos or ounces; but let's move on, please.

Q Will you ask him the question the Law Member suggested.

A He was thinner and taller than the Major.

Q Well, you can pick out almost any person in the court room, I think, that would be thinner than the Major. Are you able to get him to approximate, give his estimation of this man?

Interpreter: He says he can't tell because he didn't measure the man.

President: Let me ask a question. Correa, do you have any idea how heavy the man was?

The Witness: About 160 pounds.

President: Would you consider him slender, or medium, or stout?

The Witness: Normal or regular.

President: I think that probably answers the question as well as any.

Q Ask him to come back and sit down for a minute. Where were you captured?

A Near Tunisia; near Belshaf (?), I think the City is.

Q How old are you?

A 23.

Q How long have you been in the Army?

A In the Italian Army?

Q Yes. I didn't assume he had ever been in any other army.

Trial Judge Advocate: He is in a service unit in this country.

Defense: I understand he has a prisoner of war status. I may be wrong about it.

Q Italian Army then ask him.

A Thirty months.

Q Now, when is the first time that you ever identified the man you have pointed out here today?

A When we went to that camp.

Q You identified the man that time?

A Yes, and also the night of the 14th of August.

Q At Camp Jordan.

Assistant Trial Judge Advocate: He didn't say Camp Jordan.

Q Well, at the camp -- are you satisfied, the camp -- you definitely identify this man back here as being the same man?

A Yes.

Q You are sure of that?

A Sure.

Q And did you ever see him again at a later date?

A When they took me to the camp to see if I could recognize anybody, I recognized him.

Law Member: That is not responsive. After that time, some other camp, did he ever identify him?

Defense: I want more than the camp.

A I saw him the night of August 14, the night that I recognized him, and I identified him at the camp and that is all.

Q Well, put it this way. Approximately what is the first day after August 14 that you ever saw this man?

A I don't remember the day.

Q Well, approximately when was it?

A About fifteen days after.

Q About fifteen days after.

A Fifteen - twenty days. About that.

Q Fifteen or twenty days after August 14th?

A After August 14th.

Q Was that out here at Fort Lawton where you saw this man?

A I do not understand the question.

Interpreter: He wants to know at what time or when.

Defense Interpreter: Explain it to him. He can understand you.

A No, they took me to the camp to see if I could recognize him

Q Well, where was this camp?

A They took me there by automobile but I don't know where it is.

Q From where? From where did they take him?

A From Fort Lawton.

Trial Judge Advocate: You want the record to show it was at Camp Jordan, is that it?

Defense: No, I am trying to find out where it was. I understood it was at Camp Jordan.

Q All right. Now, you first saw this man at some camp fifteen or twenty days after August 14. Now, did you ever see him again after that before today?

A Another time they had me see him at Fort Lawton.

Q About how long ago was that?

A About seven, eight, nine days after.

Q After the first time?

Interpreter: Excuse me. That was seven, eight, or nine days had passed.

Q Did you ever see this man down at the Port of Embarkation?
A No, I never went to the Port.

Q Wasn't there one time that you saw these colored soldiers and you weren't able to identify this man?
A I always identified him.

Defense: That is all. May I ask you if you have the record of those men that were identified?

Trial Judge Advocate: No, I have never seen them.

Defense: I understood Major Manchester to say you had them.

Trial Judge Advocate: No, I have never seen them.

Assistant Trial Judge Advocate: Do you have Exhibit G?

(Defense Counsel hands Assistant Trial Judge Advocate the photograph which has previously been marked Defense Exhibit G for Identification).

Assistant Trial Judge Advocate: The prosecution now offers in evidence the photograph previously marked Defense Exhibit G for Identification.

Law Member: Defense Exhibit G for identification is received in evidence --

Defense: Over the objection of the defense.

Law Member: I didn't hear any objection.

Defense: You asked me to offer it a little while ago. I never offered it. It has never been identified. I asked the Witness if he saw this man and the Witness said no. I am objecting.

Law Member: State the grounds of your objection.

Defense: On the grounds the picture on the exhibit has never been identified by anyone.

Law Member: Defense Exhibit G for identification was shown to this Witness, at which time the Witness was asked whether or not he had ever identified the man appearing in that large picture.

Defense: I don't think I asked him that, if the Court please. I think I asked him if he had seen him.

Law Member: The purpose of the question asked by Defense Counsel was to test this man's ability to identify him. The objection is overruled. The picture is received in evidence as Prosecution Exhibit No. 26.

The photograph previously marked Defense Exhibit G for identification was then marked Prosecution Exhibit No. 26, received in evidence, and exhibited to the members of the Court.

Assistant Trial Judge Advocate: No further questions by the Prosecution. Does the Court have any questions?

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q I believe the Witness Correa mentioned having seen one colored soldier with a rifle.

A Yes, I saw a soldier who had a rifle.

Q Does he know who that soldier was?

A No.

Q Did you recognize what kind of a rifle it was?

A It was a long rifle and it was wrapped in paper, brown paper.

Interpreter: He signified this type of paper as the type it was (indicating brown manila envelope).

Q Did you see the soldiers do anything with the rifle?

A He gave blows like this with it (indicating).

Q And where was this action seen?

A Around there (indicating).

Q Meaning where?

A Near the barracks.

Q Which barracks?

A Near barracks 708.

Major MacLennan: That is all.

President: Any further questions by any members of the Court? Any further questions by the prosecution or the defense?

Assistant Trial Judge Advocate: None, sir.

Defense: I have none, sir.

President: The Witness may be excused.

There being no further questions, the Witness was excused and withdrew.

Dorporal Major Rino Ferrante, 28th Italian Quartermaster Service Company, a witness for the prosecution, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name.

A Rino Ferrante.

Q And your grade.

A Corporal Major.

Q And your organization.

A The 28th Italian Quartermaster Service Command.

Q And station.

A Mt. Rainier.

Q Do you speak the English language?

A No.

Q Do you recall the incident in August 1944 involving some Negro soldiers who were in the Italian area at Fort Lawton?

A Yes.

Q Where were you at the time that this incident occurred?

A I was in my barracks.

Q And what was the number of your barracks?

A 307.

Q Come over here with me a minute, please. This Prosecution Exhibit No. 2 gives the Italian area. This is the road, Fort Lawton Road. Here is barracks 708, barracks 709, and the orderly room, 713; latrine, 712. Tell him here are a couple of tents (to interpreter). Now, in which barracks were you?

A Near the orderly room.

Q All right, point to it.

A (Witness points).

Q 711?

A I don't remember the number.

Q All right, let's get away from the numbers if he doesn't remember it.

A He states it is the one on the side of the orderly room.

Q Did you see where the latrine is? This is the latrine (indicating).

A Yes.

Q And this is the orderly room (indicating and this is one barracks.

A This is the barracks I was sleeping in (indicating) because the barracks I was sleeping in is placed in a different position.

Q Now, he pointed to barracks 709. Now, are you sure that this is the barracks that you were in?

A Yes, right to the side of the orderly room.

Q All right. Let him have a seat. What was it that you heard or saw that attracted you to this occurrence?

A They woke me up while I was sleeping.

Q What, if anything, did you hear after you woke up?

A I went outside.

Q After you went outside what did you see?

A I went outside to the side of the barracks where there was a tree, and I placed myself behind the tree to see what was happening.

Q From that position what, if anything, did you see?

A I saw a mass of Negroes who were coming up the street.

Q Up what street? Did he say up the street or down the street?

A It was towards the orderly room.

Q Towards the orderly room. All right. Did you stay there or did you go somewhere from that position?

A No. When I saw that the Negroes were coming towards my direction I went into the orderly room.

Q After you went into the orderly room did anything occur?

A It happened that when I wanted to go outside, I couldn't go outside because the Negroes were already surrounding the barracks -- the orderly room, not the barracks.

Q Surrounding the orderly room. Was anything done to the orderly room by these Negro Soldiers?

A At that moment there, there was nothing had happened yet.

Q All right. What, if anything, happened later on?

A Later on they begin to crash in the doors and the windows.

Q How was that done?

A The door was broken by an ax and the windows were broken by pieces of wood and stones.

Q After that did colored soldiers enter the orderly room or did they remain outside?

A As soon as the doors had been broken into or crashed they remained at both doors.

Q Do you know Sergeant Farr?

A Yes.

Q Was he or not in the orderly room at that time?

A He was in the orderly room.

Q After the Negro soldiers entered the orderly room state

A whether or not you saw anything happen to Sergeant Farr?
A As soon as the Negroes entered the orderly room, Sergeant Farr stopped to talk to one of the Negroes.

Q Do you know whether or not Sergeant Farr was injured while in the orderly room?

A Yes.

Q Did you see him receive any injuries?

A I saw when he received a stab in the arm.

Q Will you stand up before the Court and demonstrate and describe how that occurred to Sergeant Farr?

A Sergeant Farr was here in front, like this (indicating). I was in back of him. I was listening to what they were saying, but I didn't understand anything because I don't speak English. Then I saw a hand shoot out from the Negro that was talking, and when I saw the knife coming forward I jumped backward. When I threw myself backwards I received a blow on the head. After that, I didn't see any more.

Q And did you see where the knife struck Sergeant Farr?

A In the arm.

Law Member: What arm?

The Witness: This one here (indicating).

Q Left arm?

A Left arm.

Q You may be seated. State whether or not you saw any glass in the orderly room that night?

A Yes, the window panes from the windows.

Q State whether or not you saw a Negro soldier in the orderly room handling a piece of glass that night.

A Inside the orderly room, no.

Q Now, I want you to come with me and look over this group of Negro soldiers that are seated here, the accused in this case, and see if there is anyone you see among their number whom you saw in the orderly room that night in question.

A (Witness makes inspection of accused seated in the Court room.) I recognized one with a mustache, but it seems to me I don't see him. He probably took off his mustache because I can't see him.

Q All right. Now, forget about the mustache. See if you see one who resembles or you can identify as having seen that night who does not have a mustache at this time.

A (Witness inspects accused and points to one of the accused.)

Q Which one? Walk up and indicate.

A It seems to me this is the one (indicating).

Q Is this the man you pointed to?

A It seems to me that he was the one with the mustache.

Q All right. Take a good close look at him and see if you have seen this man before.

A It seems to me that I saw him once before when I recognized him in the group at Fort Lawton.

Q Are you satisfied or not this is the same man?

A When he had a mustache on, this was the one. When you don't have a mustache, you take it off, why a man, his appearance, becomes different.

Q Well, suppose this man had on a mustache at this time. Would you or not say he was the same person.

Defense: Of course, if the Court please, that is not a proper question.

Trial Judge Advocate: Well, I will say to the Court that the prosecution expects to prove some facts with respect to the appearance of this Witness on the night in question and the difference in his appearance at this time.

Law Member: I think your question is in improper form, Colonel.

Trial Judge Advocate: Well, all right, sir.

Law Member: Objection sustained.

Q Let me ask you this. Are you sure that the man you saw that night had a mustache?

A Yes.

Q I want you to look over all the rest of these men now and see if there is anyone else here who resembles the man you had in mind, or whether this is the only man?

A (Witness inspects accused seated in the court room). No, my idea is that it was this one here (pointing).

Q All right. I want you to give full information as to how certain or uncertain you are as to whether that is the man.

A I am sure this was the one because he had a mustache.

Q Do you know his name?

A No.

Trial Judge Advocate: I will ask the Court for the record at this time to ascertain the name of the party to whom the Witness pointed.

Law Member: Will you ask the Witness this question? Are you positive of the identification of the man to whom you have just pointed?

The Witness: Yes.

Law Member: Will the last man on the front row stand up and give his name.

Thereupon the individual indicated by the Witness arose and stated his name, as follows: Technician 4th Grade John S. Brown.

Q Now, what, if anything, did you see the man whom you have just identified do on the occasion in question?

A He presented himself in front of the orderly room door, inside of which were M.P.'s.

Q What, if anything, did he say or do?

A He picked up a piece of glass from the ground and threw it at me while I was laying on the ground, because I could not stand on my feet.

Q And what, if anything, did you say he threw at you?

A A piece of glass.

Q You told the Court previously that you were struck while you were in the orderly room with something. What were you struck with?

A At first, I received it by a piece of wood.

Q All right. Anyother blows?

A Later while I was on the ground he give me a kick with his foot and he broke my nose here (indicating).

Q How long were you in the hospital?

A Fourteen days.

Defense: I don't think it appears clearly as to whom he refers to, counsel.

Q Are you able to identify the Negro soldier that kicked you?

A No.

Q Now, do you know an Italian soldier by the name of Bigatti?

A Yes.

Q Was he in the orderly room on the occasion you have been talking about?

A Yes.

Q Did you notice whether he was injured?

A I noticed him and I went over to get him. While I was over getting him, he was on the floor so he could not remain on his feet anymore, I received a blow in the leg.

Q Where did Bigatti appear to be injured?

A It seems that he was hurt in his eye because blood was coming out -- his ear.

Q Because what?

A Because I saw blood.

President: He said he was hurt in the eye.

Trial Judge Advocate: Ear, sir.

Interpreter: It was ear.

Q Have you seen Bigatti lately?

A Yes.

Q Is there any difference in his appearance now and his appearance in the orderly room on the night in question before he was injured?

A Yes, it is much different.

Q Will you tell the Court about that difference?

A The difference is that he is remained now with his head -- it is not normal like it used to be.

Law Member: I can't take that answer. I think the answer that the man's head is not normal as it used to be is a conclusion by this man, who is incompetent to answer.

Trial Judge Advocate: If the Court please, that is a matter a lay witness can testify about. A lay witness can testify as to observation made with respect to someone's mental conditions.

Law Member: Well, I didn't gather it was mental.

Trial Judge Advocate: I got it as head.

Q Well, we might ask him what he meant by his head.

A He is not a normal person like he was before.

Law Member: Now, that is stricken out.

Trial Judge Advocate: Well, do I understand the ruling to be --

Law Member: This man is not competent to testify.

Trial Judge Advocate: Let's see what the extent of the Court's ruling is, because I don't needlessly want to ask questions if the Law Member feels those questions are not competent. The only position that I am taking with respect to this Witness' testimony is that he having observed the man prior to this time he was injured and having observed him after he was injured is entitled to state the difference that he has formed from that observation in that man's conduct and mental condition, and that is something that lay witnesses can testify about.

Law Member: But that is not what he is testifying to. He is not testifying to things that he did before and he is not

testifying to facts that have happened since. He has just been asked the bare question and he has made the conclusion he is not a normal person, and it takes a physician to testify to that conclusion and I strike out the answer.

Trial Judge Advocate: Well, may I just say this. The question obviously was based on his observation prior to the time he was injured and then on his observation after he was injured; but I will not proceed further.

Law Member: Colonel -- this is for the record -- I thought he was going to testify to some scars or something.

Trial Judge Advocate: No, I didn't have that in mind.

Law Member: But I am not going to allow this Witness to testify as to the state of this man's mind.

Q Do you know an Italian soldier by the name of Fugazza?
A Yes.

Q Do you know whether or not he was injured on the evening in question?
A Yes, I saw that he was injured.

Q What injuries did you see him have?
A A blow on the head.

Q Did you observe whether or not he was bleeding?
A Yes.

Q Do you know an Italian soldier by the name of Pisciotano?
A Yes.

Q Did you observe whether or not he was injured on the night in question?
A Yes.

Q And what injuries did you observe?
A Nothing broken but he had a hard blow on his hand while he was holding the soldier Bigatti.

Q Do you know an Italian soldier by the name of Furlanelli?
A Yes.

Q Did you see whether or not he was injured on the night in question?
A Yes, he had an injury here (indicating).

President: What was his name?

Trial Judge Advocate: Furlanelli.

Law Member: Now, had an injury here.

Trial Judge Advocate: Yes, I will follow that up.

Q Where was that injury, and describe it and don't point.
A On the side of the left eye.

Q Did you see how he received that injury?
A No. No, I only saw that he was injured.

Trial Judge Advocate: If it please the Court, it is 3:00 and my direct is completed with this witness, but I would like to make a request to the Court and it won't take but just a minute to attend to it, and it will save me the trouble of having to bring this particular witness all the way back. We had a witness on the stand just before this witness took the stand, Correa, the other Italian, and I have one question I would like to ask him. It is a matter that is discretionary with the Court, and if the Court will exercise that discretion, permitting me to do it, it will save time.

Law Member: Subject to objection by any member of the Court, that permission will be granted. Say, Major, you wanted to ask some questions of a couple of witnesses?

Defense: Well, they haven't returned that I know of, if the Court please.

Law Member: Farr --

Defense: Farr and Haskell, and I think perhaps there was a sort of a condition you were going to look into and I would check and possibly stipulate to.

Trial Judge Advocate: Yes, that is true. Either stipulate it or bring them back. It is one of the two. May this witness be excused, because we will not go into cross-examination, as I understand it, today.

President: That's right. Tell Corporal Ferrante that he may be excused this afternoon and be here tomorrow. He is not to tell any witnesses about what he has testified today.

Interpreter: He understands.

The witness thereupon withdrew, subject to being recalled later for further examination.

Private Nicola Correa, 28th Italian Quartermaster Service Company, a witness for the prosecution, was recalled and testified further through the interpreter, as follows:

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You are reminded you are still under oath.
A Yes.

Q Tell the Court whether or not the Negro soldier you identified today was wearing a mustache or was not wearing a mustache on

A the night of August 14, 1944?
He had a mustache.

Trial Judge Advocate: That is all.

Defense: No questions.

President: The Witness will be excused.

There being no further questions, the Witness was excused and withdrew.

President: The Court will recess at this time and reconvene at 9:00 tomorrow morning.

The Court thereupon recessed at 3:00 p.m., 23 November 1944, to reconvene at 9:00 a.m., 24 November 1944.

LEON JAWORSKI
Lt. Colonel, JAGD
Trial Judge Advocate

Fort Lawton Staging Area,
Fort Lawton, Washington,
24 November 1944.

The Court reconvened at 9:00 a.m., 24 November 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The court will come to order.

A roll call of the accused, seated in the court room, was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each of the accused is present, that all members of the Court present at adjournment are present at the resumption of the trial, and that the personnel representing the accused and the personnel of the prosecution are also present.

The interpreter and reporter were also present.

Corporal Major Rino Ferrante, 28th Italian Quartermaster Service Company, a witness for the prosecution, again took the witness stand and testified further through the interpreter, as follows:

Trial Judge Advocate: You are reminded that you are still under oath.

The Witness: Yes, sir.

Trial Judge Advocate: May I ask him another question or two?

Defense: Yes, surely.

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You mentioned yesterday about an Italian soldier named Bigatti who was injured in the orderly room? Will you tell the Court what injuries you noticed Bigatti suffered.

A He was losing blood from his right ear.

Q How long have you known Bigatti?

A I have known him about eight months.

Trial Judge Advocate: If the Court please, I would like to bring in Bigatti for just a moment.

Law Member: (To Interpreter) Lieutenant, speak up loudly.

Interpreter: Yes, sir.

Law Member: And have the Witness give his answers louder.

Interpreter: Yes, sir.

Q Will you step up in front here (to an individual who has just entered the court room). Who is this man?

A Bigatti.

Q Give us his full name, if you know it?

A I don't remember his full name.

Q Is or not this the man that you spoke of as having been injured in the orderly room?

A Yes.

Trial Judge Advocate: That is all. (To interpreter) Now, will you tell Bigatti to leave.

The individual identified by the Witness as Bigatti thereupon withdrew from the court room.

Trial Judge Advocate: No further questions by the prosecution.

CROSS-EXAMINATION

Questions by Defense:

Q Ferrante, where were you taken prisoner?

A Tunisia.

Q And how long had you been in the Italian Army prior to that time?

A Five years.

Q Now, I believe you testified yesterday that you were injured in room Z?

A Yes.

Q Come over here by the map, will you, which is Prosecution Exhibit 3. Now, how many beds are there in room Z, or were there, rather, on that night?

A Two.

Q And will you indicate approximately to the Court where those beds were located?

A (Witness indicates.)

Defense: I wonder if we might draw those in there right now, if the Court please. Colonel, I am going to draw in a couple of rectangles.

Trial Judge Advocate: Let him initial them.

Defense: Just for illustrative purposes and not intended to be representative of scale or anything of the kind.

Q Will you indicate about where the end of this bed was near door E on the side of the building?

A About here (pointing).

Trial Judge Advocate: Will you do it in broken lines, if you don't mind?

Defense: Yes, I would be very glad to.

Q Right here (indicating)?

A Yes.

Q Where would the other end be?

A (Witness indicates).

Q Put your finger up there approximately where.

A Right there (pointing).

Q Right against the wall?

A A little bit away from the wall.

Q And the side of the bed was up against the side of the wall of the building?

A Yes.

Q Did those two beds take up pretty much the space in the room?

A There was still some space left.

Q What are this Witness' initials? RF?

Trial Judge Advocate: RF.

Defense: I will write in "bed" with "RF" on it. Is that satisfactory to you?

Trial Judge Advocate: Yes.

Q Now, the bed that was along the wall in room Z, near room Y, will you indicate to me approximately where the ends of that bed were?

A (Witness indicates.)

Q Put your finger up there again?

A (Witness indicates.)

Q All right. Now, the other end?

A (Witness indicates.)

Q O.K. There was space between the ends of the beds and the wall.

A Yes, there was a little.

Q And was the bed right up against the wall between room Z and room Y?

A Like this one (indicating first bed identified).

Q And I will write also, Counsel, on this other that he identified the word "bed" with the initials "RF".

Law Member: It is understood the bed isn't drawn to scale.

Defense: Oh, clearly. Just for illustrative purposes.

Assistant Trial Judge Advocate: It is about five inches long, so that would make the bed about twenty feet.

Defense: There is no scale -- oh, there is a scale.

Law Member: Well, generally represents the beds.

Trial Judge Advocate: That is all right just so it is understood.

Defense: It is not intended to be exact. I didn't notice the scale at the time I drew it.

Q Now, Ferrante, what other furniture was in room Z?

A This angle here (indicating) was closed.

Law Member: Ask him if it was a closet.

Q The witness has indicated that the corner of room Z nearest to door D was closed. Was that a closet?

A Yes, it was a stationary closet.

Q Now, what were the approximate dimensions of the closet?

A Eighty by forty. About eighty forty.

Q Inches?

A In Italian.

Q Can you translate that over for us?

A I can show you on the ground approximately how much that is.

Q Well, as long as the beds aren't drawn to scale, let's have him put it in purely for illustrative purposes only, shall we. Indicate approximately on this map where the closet was.

A (Witness indicates.)

Q All right. About right here (indicating)?

A (Witness indicates.)

Q All right, indicate again?

A (Witness indicates.)

Q About here. Would you like that drawn with broken lines?

Trial Judge Advocate: Please.

Q All right. It is understood, if the Court please, that the closet is purely for illustrative purposes also and not drawn to scale. I will write in there "closet" and the initials. Now, were there any other closets, bookcases, or anything of that sort in the room?

A Only the place where the Americans hang their clothes.

Q Well, were those hung on the wall?

A A shelf.

Q On a shelf. Well, how far out from the wall did the shelf extend? Ask him to indicate if he will.

A (Witness indicates.)

Defense: Now, Colonel Jaworski, can we stipulate here approximately what he has indicated? About fourteen inches?

Trial Judge Advocate: That's right.

Defense: It is stipulated between Counsel that the witness has indicated the shelf protruding from the wall to be about fourteen inches in width.

Q Now which wall was the shelf protruding from?

A (Witness indicates.)

Q All right. The witness has now indicated the wall between the doors B and D in room Z. Now, you show us approximately on there where the ends of the shelf were.

A (Witness indicates.)

Defense: Do you want me to draw that in a broken line also?

Trial Judge Advocate: Please.

Defense: It is understood, if the Court please, that the shelf I am now indicating on Prosecution Exhibit 3 is not drawn to scale but purely for illustrative purposes. I will write "shelf" with the initials "RF".

Q Now, were there any other protrusions in the wall or any other space taken up in the wall by fixed objects?

A At that moment there I didn't see anything else.

Q Well, were there any chairs in the room?

A I don't remember.

Q You don't remember any chairs. Now, approximately how long was it, Ferrante, before the military police arrived that you were first injured?

A About forty minutes.

Q About forty minutes before. And what was the first injury that you received?

A On the head.

Q On the head. And what part of the head was that?
A here (indicating).

Q You are indicating on top of the head over the left eye?
A Yes.

Q Was that a severe blow or was it a light blow?
A A heavy blow.

Q Do you know with what size stick or club you were struck?
A I was hit from behind; therefore, I could not see.

Q Did the blow break the skin?
A Yes.

Q Did it bleed?
A I could not see any more blood that was coming out.

Q I see. Now, what other injuries did you receive?
A To the nose.

Q And approximately how long before the military police arrived did you receive that blow to the nose?
A I don't remember exactly.

Q Did your nose also bleed?
A Yes.

Q Now, approximately how long was it before the military police arrived that you saw the man whom you identified yesterday?

Interpreter: Will you repeat that, please?

Defense: Will you repeat it, Mr. Reporter?

(Question read by reporter.)

A He came after the military police had come inside, had entered.

Q Now, where were you at the time you were injured in the nose?
A I was here (indicating).

Q You were in room Z?
A Yes.

Q Well, what part of the room were you in? Were you on the floor, were you sitting down, or were you standing up?
A I was on the floor.

Q There were quite a number of colored soldiers in there at that time?
A At that time there was no one.

Q Well, after you were injured in the nose, did the colored

A soldiers leave room Z?
A Yes.

Q Did they come back again?

A No. Later on we saw one that came in front of the door and that was the one I identified yesterday.

Q Now, approximately what part of the room were you in at the time you identified this man?

A Always there in that room Z.

Q Well, what part of the room? Have him indicate.

A (Witness indicates.)

Q Put your finger up there again.

A (Witness indicates.)

Q About here?

A Yes.

Q Now, I will indicate that by the initials "RF-1". Now, how were you lying; which direction was your head in?

A My head was here (indicating).

Law Member: Why don't you say just toward E.

Defense: I thought I would draw a little arrow, if the Court please.

Q Your head was in the direction shown by the arrow leading off from "RF-1"?

A Yes.

Q Were you laying on your stomach, on your side or on your back?

A On my back.

Q On your back. Now, where was the man whom you identified yesterday at the time you saw him?

A Right in the doorway here (indicating).

Q Right in doorway E. Well, you are indicating a little bit outside of doorway E.

A In front of the door.

Q Outside or inside?

A Outside.

Q Outside. I will mark that "RF-2". Now, did this soldier you saw have a helmet on or not?

A I don't remember.

Q You were looking right at him, weren't you?

A Yes, I was looking at him, but I don't remember what he had on his head.

Q Was there anything obstructing your vision any at that time?

A No, he could easily be seen.

Q All right. Sit down back over here a minute. You remember when I talked to you down at Mt. Rainier the other day?

A Yes.

Q Captain Noyd here was with me?

A Yes.

Q Lt. Gagliardo here was with me?

A Yes.

Q And there was a stenographer with me?

A Yes.

Q Didn't you tell me at that time that you were partially blinded because of blood flowing from the wound in your head?

A Yes.

Defense: That is all, if the Court please.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Will you state whether or not you or anyone else removed blood from your face prior to the time that you saw this man you have identified?

A No.

Q Will you describe to the Court just where the blood that came from the wound on your head was flowing.

Interpreter: He indicates like this (indicating).

Q It is on the left side of the head from the forehead to the cheek?

A Yes, down like this (indicating).

Q Was the blood flowing at the time that this soldier whom you have identified threw the piece of glass at you?

Defense: Objected to as leading, if the Court please.

Trial Judge Advocate: Let's see how I started that off.

Law Member: Reform your question.

Trial Judge Advocate: Let's see how I started. Frankly, I don't remember how it started.

(Question read by reporter.)

Q I have it. State whether or not at the time that the soldier whom you identified threw the piece of glass the blood was flowing from the wound to your face?

A Yes.

Q Now, will you show the Court just how it was flowing at that time?

A It came down like this (indicating).

Q Did or not any --

Law Member: "like this" doesn't mean anything.

Trial Judge Advocate: Well, it was the same indication made before. From the left side of the forehead to the left cheek bone, and passed the corner of his left eye.

Q Did any part of that blood get in your left eye?

A Yes.

Q Did any part of that blood get in your right eye?

A No.

Q State to the Court whether or not your vision at the time you saw the soldier you identified enabled you to see clearly.

Defense: Objected to as leading.

Law Member: It is leading. Isn't that a question for the Court?

Trial Judge Advocate: Oh, no. It wasn't objected to on the grounds it was a conclusion, and I don't think it would be a conclusion.

Defense: I have no objection to Counsel asking the witness what the physical facts were, I endeavor to bring them out, but the Court is right. What the witness was able to see is for the Court to determine.

Trial Judge Advocate: Yes, but the Court is not in a position to make that determination unless the facts are developed.

Trial Judge Advocate: Let's see now. Read the last question. I think I can reach it another way.

(Question read by reporter.)

Law Member: Read it again, please.

(Question again read by reporter.)

Law Member: I think that question is in an objectionable form and I wish you would reform it.

Trial Judge Advocate: All right, sir.

Q Will you tell the Court, please, as to whether or not at the time you identified this soldier you were able to see clearly

- or whether your vision was blurred?
- A I could see well from my right eye, but from my left eye I could see only a little because it was full of blood.
- Q What position were you in at the time that you saw the soldier whom you identified?
- A In room Z.
- Q In what position was your body?
- A Like it is indicated on the map; by the sign that the Major made.
- Q Were you sitting down, lying down or standing up?
- A I was on the ground.
- Q Was your entire body lying on the ground or was it partially raised?
- A All on the ground.
- Q All right. Will you describe to the Court the approximate size of the piece of glass that was thrown at you by the soldiers you identified.
- A About that big (indicating).
- Q All right. He describes a piece of glass approximately seven inches by five inches. Did the glass strike you?
- A No, because when I saw he was throwing the piece of glass I dodged with my head.
- Q Did he or not say anything to you as the piece of glass was thrown?
- A No, he didn't say anything to me.

Trial Judge Advocate: The prosecution has no further questions.

RECROSS-EXAMINATION

Questions by Defense:

- Q Ferrante, did the soldier pick the piece of glass up off the floor that was thrown at you?
- A Yes, from inside the orderly room.
- Q Well, was the piece of glass laying in doorway E or in that immediate vicinity?
- A It was on the inside of the angle of the door.
- Q Well, would you indicate on Prosecution Exhibit 3, please?
- A (Witness indicates.)
- Q I will mark that "RF-3" where the Witness has indicated.

Defense: Is that satisfactory, Counsel? I marked that "RF-3", the point the witness indicated.

Law Member: That indicates where the glass was on the floor.

Defense: On the floor, yes.

Q Now, door E is a solid wooden door, isn't it, Ferrante?
A Yes.

Law Member: Ferrante, on Prosecution Exhibit 3 you have indicated an arrow pointing toward door E. Was your head, when you were on the floor, pointing toward door E?

Defense: I must object to the Court's question as being very leading and suggestive of the answer.

Law Member: I will overrule it.

The Witness: My face was looking upward.

Law Member: In what direction was your head?

The Witness: Like the sign that the Major made.

Defense: Can the Court see the arrow on the map, that way it is drawn?

Law Member: It is pointing directly at door E.

Defense: I think we can agree that it is. If the Court has any question the arrow wasn't pointing directly to door E, I think we can all agree.

Trial Judge Advocate: Well, it may not be.

Defense: Well, in that general direction.

Trial Judge Advocate: In that general direction.

Defense: I would be glad to move the map.

Law Member: Well, that is the way it looks to me. I want to know in what position your body was as you were lying on the floor of room Z.

The Witness: I was with my head to the inside and my feet towards the door.

Law Member: What is that?

The Witness: My head towards the inside and my feet towards the door.

Law Member: O.K. Now, tell us whether or not on the night in question as you were lying on the floor you had your glasses on.

The Witness: No.

Law Member: Why, Ferrante, do you wear glasses?

The Witness: Because my eyes are weak from Africa.

Law Member: Are you near-sighted or far-sighted?

The Witness: No, it gives no trouble because I am weak of sight.

Law Member: Is that weak of sight for seeing distances or for reading?

The Witness: Mostly for reading.

Law Member: That is all.

Q Ask him if I can see his glasses a moment, please.

A Yes. (Witness hands glasses to Defense Counsel.)

Trial Judge Advocate: Do you have any further questions, Major?

Defense: No, I have no questions.

President: Are there any questions by the members of the Court?

Trial Judge Advocate: I think there is one other question I have, if the Court please.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You have indicated where you were and where this man was whom you have identified. I wonder if you could tell the Court in distance how close or how far you were from each other, and in that connection I will ask you to point out some objects in the court room to indicate that distance.

Defense: Perhaps he better have his glasses off as he was that night.

Trial Judge Advocate: It is all right with me.

Law Member: What does he indicate? He is pointing out something here.

Q All right. Will you have him indicate.

A I was with my feet here (indicating), in the room, but he was at about that angle of the table.

Q All right. Just stay here. (The Trial Judge Advocate then measures the distance indicated by the witness with a ruler.) It is approximately 66 inches.

Defense: If that is the measurement you get, it is satisfactory.

Trial Judge Advocate: Five and one-half feet.

Captain Atkinson: From the door?

Trial Judge Advocate: No, that was the distance that he was from the man who threw the piece of glass at him.

Lt. Colonel Stecher: Is that the distance to his feet? That's what I understood before.

Trial Judge Advocate: Yes. Let's develop that and make sure. Let's see how the question read and make certain of it.

(Question and answer read by reporter.)

Q All right. Were you or not straightened out when you were lying on the floor?

A What do you mean by straight?

Q All right, take a position on the floor just as you occupied that night.

A (Witness lies down on floor.) Like that.

Q All right, fine. That is good. Thank you. Now, let's see how tall he is. Come over here, please.

A (Witness stands against pole previously referred to.) Five feet four and one-quarter inches.

President: Any further questions?

Trial Judge Advocate: The Prosecution has no further questions, if the Court please.

Defense: The Defense has no further questions.

President: Does the Court have any questions?

Major MacLennan: I have, sir.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q Witness Rino Ferrante, you have testified, as I recall, that you received a blow on the head in building 713?

A No.

Q No blow on the head?

A In the orderly room, yes.

Q All right. Were the MPs there at that time?

A No.

Q As I recall, you have also testified that a piece of glass

A was thrown at you in this building?
A Yes.

Q Were the M.P.'s there then?
A Yes.

Q You have also testified, I believe, that you were kicked on the nose in this building?
A Yes.

Q Were the M.P.'s there at that time?
A When I was kicked, no.

Major MacLennan: Thank you.

The Witness: You are welcome.

President: Any further questions?

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Were any M.P.'s in the room where you were at the time the glass was thrown at you -- in that particular room?
A No.

Trial Judge Advocate: That is all.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

President: I would like to call the attention of the Court, the Prosecution and the Defense to the fact that the scale on the map, Exhibit 3, is incorrect, the map having apparently been blown up from a smaller picture. The scale on the side of the map shows twenty feet would be the entire width of the building, and from that you should make your scale in figuring your distances. If one-quarter inch equals one foot, it would indicate the building is four - five times the size that it is.

Law Member: Is the engineer going to be produced?

Trial Judge Advocate: Yes, sir, at any time the Court wants it. However, I have in mind somewhere down the line bringing him in myself.

Defense: I might advise the Court the side of the building shown as twenty feet is approximately fifteen three-quarter inches, so clearly the scale is wrong.

President: One inch equals about one one-third foot.

Defense: I am not as good a mathematician as the Court.

President: Well, that's approximately.

Trial Judge Advocate: It will be understood, if the Court please, anything drawn on the map is drawn for illustrative purposes only.

President: The reason I brought it up, we are talking about the map and in order to give the Court some idea of distances, if you used that scale, as shown, in your mental calculations, you would have a pretty big room instead of a small room.

Defense: For the reviewing authority, may I draw a line through the scale and make a notation that it is incorrect. Is that satisfactory?

Trial Judge Advocate: That's all right, sure.

Defense: If the Court please, I have drawn several red lines through the scale with the notation on Prosecution Exhibit 3 that the scale is incorrect.

Trial Judge Advocate: Is the Court ready to proceed?

President: Yes, proceed.

Sergeant Bruno Bigatti, 28th Italian quartermaster Service Company, a witness for the prosecution, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Give us your full name.

A Bigatti, Bruno.

Q Bruno Bigatti.

Defense: Oh, Counsel, I neglected one thing. May the record show that the last witness, Ferrante, made his estimate of distance here with his glasses on, which I think is correct.

Trial Judge Advocate: Oh, yes, but if you want to make a point about it, we will let him take them off and make it again.

Defense: I want the record to show correctly what the witness was doing when he did it. I am sorry I interrupted you.

Trial Judge Advocate: It is quite all right.

A It is Bigatti. The first name is Bruno.

Q What is your grade?

A Sergeant.

Q And your organization?

A 28th Italian Quartermaster Service Company.

Q And your station?

A Mr. Rainier.

Q Were you ever stationed at Fort Lawton?

A Yes, it was at Fort Lawton.

Q Were you at Fort Lawton on August 14, 1944?

A Yes.

Q Have you been in a hospital?

A Yes.

Q For how long?

A About two months. I don't remember very well.

Q What, if anything, were you treated for?

Defense: Just a moment, if the Court please. I think there ought to be a showing that the witness knows.

Law Member: What is that?

Defense: I think there should be some showing that the witness knows and has an understanding what he was treated for before he is asked specifically.

Trial Judge Advocate: I will withdraw that question, and I think I can get in a different way.

Q Have you or not had any injury on your head?

A At that time?

Q What part of your head?

A I think on this part here, on the right side.

Q Will you point to the part you have reference to.

A (Witness indicates.) Here.

Q Pointing to the right ear. (To Defense Counsel) You may come around and look, if you want to.

Defense: No, if you say that is what he indicates. Is that over the ear, Colonel, or on the ear?

A (Witness again indicates.)

Q Do you have any recollection of having been in the orderly room in the Italian area at Fort Lawton when the Negro soldiers were in that area on August 14, 1944?

A No, I don't remember.

Q Do you or not remember anything about the matter at all?
A No, nothing.

Defense: Then, of course, if the Court please, from the witness's answer I will have to move to strike the previous part of his testimony in regard to the injury because the witness has absolutely no knowledge it was received this evening, or when or where.

Trial Judge Advocate: Obviously it didn't come from this witness, but I developed those facts from other witnesses who saw him sustain the injury and described the injury to the Court.

Defense: I think it is probably proper for the witness to describe the nature of the injury, or what injury he had, but to have this man testify in view of the present answer --

Law Member: There is no evidence from this witness he sustained the injury that night.

Defense: Oh, yes, if the Court please.

Law Member: Because of the fact he doesn't remember anything, the Court takes notice; but there is evidence from another witness the man was bleeding in the orderly room.

Defense: I may call the Court's attention to the fact Counsel referred back into the night of August 14, and in the Italian area, and it is my recollection the witness said he received his injury at that time.

President: Let's read the record.

Law Member: He did say at that time.

Interpreter: He was asking a question, "At that time?" in answer to another question. In answer to another question, he asked a question.

Law Member: He asked you a question?

Interpreter: Asked me and I conveyed it. If it was misunderstood, I don't know.

Trial Judge Advocate: We were talking about being in the hospital when that was asked.

President: Let's read it.

Defense: Yes.

Law Member: This is what the interpreter says as being a question in answer to a question asked at that time.

President: Let's read the record.

(Question and answer read as requested by reporter.)

Interpreter: "At that time" was another question.

Law Member: A question from you as interpreter back to Counsel?

Interpreter: That's right.

Trial Judge Advocate: Previous to that we talked about being in the hospital.

Defense: With the understanding we have from the interpreter, I will withdraw my objection.

Law Member: I will strike out the answer made by the interpreter, so there is no indication in the record from this man's testimony he knows he got the injury in the orderly room the night of August 14.

Interpreter: My question was his answer.

Law Member: Which you replied. All right, that is understood.

Defense: So we will be accurate, may we have this understanding at this time with the interpreter. In the future if a witness replies by asking a question, the interpreter will indicate that to all concerned.

Law Member: I think everybody is agreed "at that time" will go out of the record. Proceed.

Q What is the last recollection that you have of anything prior to the time that you were in the hospital?

A I can't remember anything.

Trial Judge Advocate: The Prosecution has no further questions, if it please the Court.

CROSS-EXAMINATION

Questions by Defense:

Q Bigatti, where were you taken prisoner?

A Tunisia.

Q And after you were taken prisoner what was done with you?

A I was placed into a concentration camp.

Q Whereabouts?

A In Arizona.

Q And approximately when did you arrive in Arizona?

A Right now I don't remember when I arrived in Arizona.

Q Well, can you tell me about the month?

A It seems to me in June or July.

Q Approximately when did you first come to Fort Lawton?

A I don't remember what date we arrived.

Q Well, just give me the month.

A It seems to me it was June.

Q June?

A June.

Trial Judge Advocate: He said it seems to be June.

The Witness: It seems to me it was June.

Q How many years or how long a period of time, Bigatti, were you in the Italian Army?

A It is about four years, I believe. I don't know for sure.

Q Whereabouts in Italy is your home?

A In Milan.

Q Are you married?

A No.

Q Do you have any brothers or sister?

A I have a brother and a sister.

Q And what is your sister's name?

A Adelia.

Defense: The Defense has no further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Do you or not recall Negro soldiers ever entering the Italian area in the month of August, 1944?

A No, I have never seen them.

President: What was that question, again?

Trial Judge Advocate: Did he remember ever seeing Negro soldiers enter the Italian area in August 1944. The Prosecution has no further questions.

EXAMINATION BY THE COURT

Questions by President:

Q Bigatti, do you remember coming to Fort Lawton in June?

A I don't remember at what time I came.

Q You remember that you did come here?

A Yes, that I remember.

Q Do you remember working at Fort Lawton?

A Yes, that I remember.

President: Any further questions?

Major MacLennan: I would like to ask a question.

Questions by Major MacLennan:

Q Does the witness remember an American soldier, Pfc. Gould?

A It seems to me that I have heard him mentioned, but I don't remember him.

Q Does he recall an American soldier named Sergeant Farr?

A I do remember Sergeant Farr.

Q One more question. Was the witness injured while he was in the Italian Army?

A No, never.

Major MacLennan: Thank you. That is all I have.

President: Any further questions?

Trial Judge Advocate: There is one question I would like to ask the witness.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q With respect to Sergeant Farr, have you or not seen Sergeant Farr in the last few weeks?

A Yes.

Q Is he or not at Mr. Rainier Ordnance plant where you are?

A Yes.

Q Did you or not come to Court with him this morning?

A Yes.

Trial Judge Advocate: No further questions.

President: Any further questions? There appear to be none. The witness will be excused.

There being no further questions, the witness was excused and withdrew.

Private Thomas Battle, 651st Port Company, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name, rank, grade, your organization and your station.

A Private Thomas Battle, 651st Port Company.

Q And your station?

A Fort Lawton, Washington.

President: I didn't get anything he said there.

Q Pull up your chair a little bit and speak out loudly. Every member of the Court wants to hear what you have to say, so speak up and speak out loudly.

President: What is the rank?

The Witness: Private Thomas Battle.

President: And the organization?

Q 650th Port Company.

A 651st.

Q 650th or 651st?

A 651st, sir.

President: All right, proceed.

Q Private Battle, do you recall the incident on August 14, 1944, when a group of negro soldiers entered the Italian area at Fort Lawton?

A Sir, I do.

Q Where were you when you first knew of this incident?

A At the bus stop, sir.

Q At the what?

A Bus stop.

Q The bus stop?

A Yes, sir.

Q What barracks did you stay in?

A 672, sir.

Q 672. Come up here to the map with me just a minute, will you and look at Prosecution's Exhibit No. 2 so that you might get your bearings. This is Lawton Road; here is the 578th mess hall (indicating on Prosecution Exhibit 2).

A Yes, sir.

Q And barracks 672 is indicated here (indicating on Prosecution Exhibit 2)?

A Yes, sir.

Q Do you recognize the barracks indicated as 672 as the barracks in which you stayed?

A Sir, I do.

Q You do. All right, now, where is this bus stop? Is it some distance from your barracks or about where is it?

A Sir, I couldn't tell you just where the bus stop is placed on there.

Q Well, approximately how far from your barracks?

A It is a pretty good distance, sir.

Q Well, can you give it to us in blocks?

A No, sir, I couldn't exactly give it to you in blocks.

Q Well, about how many?

A I would say about 14.

Q About 14. All right, sit down. Now, what had you been doing there?

A Sir, I went up to meet my wife.

Q Did you meet her?

A No, sir, I did not.

Q After you failed to meet her, what did you do?

A I goes back to my organization.

Q All right, what part of your organization or what building, if any?

President: Slow down just a little bit.

Trial Judge Advocate: All right. I am sorry.

President: All right, proceed.

Q To what building, if any?

A 672, sir.

Q That is your barracks?

A Yes, sir.

Q Now, did you at any time thereafter leave your barracks on that evening?

A No, sir, I didn't, other than going up to the bus stop.

Q Well, now, I am talking about when you returned to your barracks after being at the bus stop?

A Sir, I did.

Q You say you did leave it after returning to your barracks, is that correct?

A I did, sir.

Q Now tell the Court where you went.

A I goes down Lawton Road, sir, after I heard the commotion down there to see what it was all about. After I --

Q Wait a minute. What kind of commotion did you hear?

A I heard hollering down there and window panes being broken.

Q After you got down there what did you see? I don't mean who in particular, but generally what did you see?

A I saw T/5 Willie --

Q (Interrupting) I am not asking you any particular person you saw. I just want you to describe generally what you saw.

A I saw a jeep being run into a tent.

Q Was that the first thing you saw?

A About the first thing I saw, sir.

Q All right. Did you see anyone in that jeep whom you recognized?

A Sir, I did.

Q Who was that?

A T-5 Willie S. Curry.

Q T-5 Willie S. Curry.

Major MacLennan: I didn't get the spelling.

Trial Judge Advocate: C-u-r-r-y.

Q State whether or not anyone else had been in the jeep besides Willie Curry?

A Sir, there was someone else in there but I don't know who it was.

Q Well, tell us was this somebody else in there at that time the accused Willie Curry was or at some other time.

Defense: If the Court please, I am going to ask the Court at this time to require Counsel before asking these questions to lay a foundation first that the witness knows, and then he may ask them. In other words, I can't make an objection because it doesn't clearly appear whether the witness is giving information from what somebody has told him or from what he actually saw himself, and I am objecting for that reason.

Trial Judge Advocate: I asked him if he saw anything, and he said he did, and I asked him what he saw and he was telling us what he saw.

Law Member: Then he says there had been somebody else in the jeep.

Trial Judge Advocate: I asked him and he was describing what he saw there at the scene.

Defense: Well, he may or may not have been. I don't think it appears accurately from your question, that's all.

Trial Judge Advocate: I don't know how it could be any more clear.

Defense: I want to safeguard the accused from any hearsay testimony.

Trial Judge Advocate: I will ask him three or four times in a row then, each time the same thing.

Q Now, did you yourself see someone else in that jeep besides Willie Curry?

A Sir, I did.

Q Did you see whether this person stayed in the jeep or whether this person left the jeep?

A He left the jeep, sir.

Q Did you see whether this person had been in the jeep before Willie Curry was or after Willie Curry was in it?

A Before, sir.

Q Well, tell the Court just exactly what you saw happen there with respect to that jeep.

A After seeing this guy get out of the jeep I saw Willie Curry take over.

Q Now, could you recognize this fellow that got out of the jeep before Willie Curry took over?

A I cannot, sir.

Q Was he or not a negro soldier?

A Yes, sir.

Q All right. After Willie Curry took over what, if anything, did you see?

A I saw him jam the jeep into the tent twice or more.

Q Could you tell whether or not the tent was damaged in any way?

A No, sir, I cannot.

Q Can you give the Court some idea as to how far into the tent the jeep was run?

A No, sir, I cannot.

Q Do you or not see Willie Curry leave the jeep?

A Sir, I did.

Q Did you see whether or not he had anything in his hand when he left the jeep?

A Sir, when he left the jeep he had a club in his hand.

Q Now, I want you to come with me and see if the Willie Curry you have been talking about is among the accused over here, and, if so, I want you to point him out?

A (Witness makes an inspection of the accused seated in the court room). Right here sir (pointing to one of the accused.)

Trial Judge Advocate: (To the Court) He indicated the third man from the end of the middle row.

Q Do you know Freddie Umblance?

A I do, sir.

Q Was he a member of your Company?

A No, sir, he was not.

Q How long had you known Freddie Umblance?

A A year and better, sir.

Q Did you or not see Freddie Umblance in the Italian area on the occasion in question?

A Sir, I did see him down there.

Q Did you see whether or not he had anything in his hand?

A Sir, he had a club in his hand.

Q And where did you see Freddie Umblance?

A Between 713 and 709, sir.

Q Between 713 and 709. That is the orderly room and a barracks, is that correct?

A Sir, it was.

Q Come over here to the map and let's make sure. Between where, now? Point it out.

A Between here and this point right here (indicating on Prosecution Exhibit 2).

Q All right. That is between 709 and 713. How close did you get to the orderly room?

A I imagine about 17 paces, sir.

Q Did you or not see into the orderly room from where you were?

A Sir, I could see into one door.

Q Which door was that?

A The side door on the right-hand side, sir.

Q Will you come over here with me now. Prosecution Exhibit 3 is a plat of the orderly room. This door A is the front door; door E is a side door. Now, which door did you look in?

A I looked in this one, sir (indicating on Prosecution Exhibit 3).

Q Door E?

A Yes, sir.

Q Did you or not recognize any colored soldier in the orderly room?

A Sir, I recognized one.

Q Who was that?

A James Chandler.

Q What was he doing, if anything?

A He was only standing in the door peeping out.

Q Which door?

A Door E.

Q That same door you just looked at?

A Yes, sir.

Q Doorway, rather. Did James Chandler or not have anything in his hand?

A Sir, he did.

Q What did he have in his hand?

A He had a small sized club, sir.

Q About how long would you say that club was? Can you demonstrate to the Court its approximate length?

A Approximately about 18 inches long.

Q Now, will you come with me and see if you can identify James Chandler from the rest of these accused?

A (Witness makes an inspection of the accused seated in the Court Room.) This one, sir (pointing to one of the accused).

Trial Judge Advocate: The second man from the end in the back row.

Q While you are over here we might just as well see if you can identify Freddie Umblance.

A This man, sir (Indicating one of the accused.)

Q All right. Do you know the accused Johnnie Ceaser?

A Sir, I do.

Q State whether or not you saw the accused Johnnie Ceaser on the night in question.

A I did, sir.

Q And where did you see him?

A I saw him on the right-hand side of door E steps.

Q What, if anything, was he doing at the time you saw him.

A Knocking out window panes, sir.

Q With what?

A With a club.

Q-- Now, will you come with me here to Prosecution Exhibit 3 and

please point out which window or windows you have reference to? This is door E, as I mentioned to you before -- the side door.

A Well, this side (indicating on Prosecution Exhibit 3).

Q That is on the east side of door E in room Z. The window in room Z. Do you know Jefferson Green?

A I do, sir.

Q Did you or not see Jefferson Green on the occasion in question?

A Sir, I did.

Q And where did you see Jefferson Green?

A On the right-hand side of door E.

Q That is door E of Prosecution Exhibit 3. Did Jefferson Green have anything in his hand?

A Sir, he had a club in his hand.

Q About what size club was it?

A I wouldn't know, sir.

Q Did you see the club?

A Yes, sir, I saw it.

Q Could you estimate its length as to approximately how long it was?

A Well, sir, it might run about that long (indicating with hands).

Defense: Well, let's have him indicate and measure it.

Q Will you hold that again?

A Yes, sir.

(The Trial Judge Advocate and Defense Counsel measure the distance indicated by the witness with a ruler.)

Defense: 57 inches.

Trial Judge Advocate: 57 inches.

Q Come with me, now, and let's see if you can identify Johnnie Ceaser first.

A (Witness makes an inspection of the accused sitting in the Court room.) This man, sir (indicating one of the accused).

Q That is Cpl. Johnnie Ceaser?

A Yes, sir.

Q And I wish you would look over this group of soldiers now and see if you can identify Jefferson Green.

A (Witness makes an inspection of the accused seated in the Court Room.) Here, sir, (indicating one of the accused.)

Q All right. Do you know the accused Tech 5 Lee Dixon?

A Sir, I do.

Q Can you state whether or not you saw him on the occasion in question?
A I saw one person resembling him. I am not positive that was him.

Defense: I move to strike the answer from the record.

Trial Judge Advocate: I don't think the answer should be struck.

Law Member: No, It just shows he is not identifying him.

Defense: If the Court is not taking it as any indication of identification, if the Court isn't receiving it or taking it as identification of any particular individual, I have no objection to it remaining.

Law Member: He says he doesn't identify him as being there. I don't see where it has any bearing on the issues here whatever.

Q Do you know the accused Sylvester Campbell?
A I do, sir.

Q Did you see him on the night in question?
A I did, sir.

Q Where did you see him?
A I saw him between 713 and 709.

Q What, if anything, was he doing?
A He wasn't doing anything, sir.

Q State whether or not he had anything in his hands?
A Sir, he did not.

Q State whether or not you saw where he went?
A Sir, I cannot.

Q All right. Now, do you know the accused Herman Johnson?
A Sir, I do.

Q State whether or not you at any time had a conversation with Herman Johnson about the incident that occurred in the Italian area?
A Sir, I didn't have a conversation with him.

Q Well, did you at any time overhear any statement Herman Johnson made with respect --
A (Interrupting) I did, sir.

Q And when was that?
A That was after the fight.

Q How long after?
A The next day, sir.

Q About when the next day?

A I would say about 3:00, sir.

Q Where did this matter take place -- the statement that you heard?

A It take place after we went under guard, sir.

Q Now, what was it that you heard the accused Herman Johnson say?

A I heard him say that the M.P. had taken a flashlight away from him and he lost a piece of his trenching tool down there with his serial number on it.

Q Let's get that. That the MP.'s took a flashlight from him, is that the first thing you said?

A Yes, sir.

Q And that he lost what down there?

A A piece of his trenching tool.

Q A piece of his trenching tool?

A Yes, sir.

Q A piece of his trenching tool. And what did you say it had on it?

A His serial number.

Q His serial number on it. All right. Now come with me and let's get, first, the accused Sylvester Campbell identified. Do you see Sylvester Campbell among the accused?

A I do, sir. The third man, sir.

Q Where? On this front row?

A Sir, sir. Fourth man, sir.

Q That is Sylvester Campbell?

A Yes, sir.

Trial Judge Advocate: (To the Court) The fourth man on the front row.

Q Do you see, while you are here, Herman Johnson?

A I do, sir.

Q Where is he?

A The eighth man on the second row.

Q Is this the man you pointed to (indicating one of the accused)?

A Yes, sir.

Trial Judge Advocate: Can the Court see?

President: Johnson, stand up.

(The accused pointed out by the witness then stood up, and thereafter resumed his seat.)

President: We will take a recess for 15 minutes and reconvene at 10 minutes of 11:00.

The Court thereupon recessed at 10:35 o'clock a.m. and reconvened at 10:50 o'clock a.m., on 24 November 1944.

Trial Judge Advocate: Let the record show each of the accused is present; that the members of the Court are present, and the personnel representing the accused and the personnel representing the prosecution.

The Reporter was also present.

Private Thomas Battle, 651st Port Company, a witness for the prosecution, resumed the witness stand and testified as follows:

DIRECT EXAMINATION

Questions by the Trial Judge Advocate:

Q You are reminded you are still under oath, Private Battle.

A Sir, I do.

Q Do you know Sergeant Ernest Graham?

A I do, sir.

Q Did you or not see him on the occasion in question?

A I did see him down there, sir.

Q Did he or not have anything in his hands?

A He had a club in his hands, sir.

Q He had a club in his hand?

A Yes, sir.

Q Now, approximately where did you see Sergeant Ernest Graham?

A He was leaving the area, sir.

Q Leaving the area?

A Yes, sir.

Q Now step up here to this map, Prosecution Exhibit 2, and point out approximately where you saw him. This is barracks 708, 709; orderly room 713; mess hall, 700; is over there. (Trial Judge Advocate has been indicating on Prosecution Exhibit 2.) Approximately where did you see him as he was leaving the area?

A Along about here, sir (indicating on Prosecution Exhibit 2).

Q Now you are pointing to this southwesterly corner of barracks 709.

Law Member: On the road.

Q On Lawton Road?

A Yes, sir.

Q Do you know the accused Roy Montgomery?
A I do, sir.

Q Did you or not see them on the occasion in question?
A I did, sir.

Q Where did you see him?
A On the left-hand side of door E.

Q Door E of what?
A Of the orderly room, sir, 713.

Q That is building 713 on Prosecution Exhibit 2, and door E is on Prosecution Exhibit 3. Did you notice whether or not he had anything in his hand?
A Sir, I did not.

Q You did not. All right, now, come with me and I want you to see if you see Sergeant Ernest Graham among the accused; if so, I want you to point him out.
A (Witness makes an inspection of the accused sitting in the Court Room.) The third man on the second row.

Q All right. How old are you Private Battle?
A 23, sir.

Q Where was your home before you went into the Army?
A Mississippi, sir.

Q Mississippi?
A Yes, sir.

Q What town or city in Mississippi?
A Edwards.

Q Edwards?
A Yes, sir.

Q Now, have you or not been promised anything for testifying as a witness in this case?
A Sir, I have not.

Trial Judge Advocate: The Prosecution has no further questions.

President: (To Defense) You may cross-examine

CROSS-EXAMINATION

Questions by Defense:

Q With whom have you discussed your testimony in this case, Battle?

A Sir, I didn't get a good understanding of that.

Q I saw with whom have you discussed the testimony you are giving here today prior to coming to this Court Room?

A Well, I have had a talk with Colonel Jaworski.

Q Colonel Jaworski?

A Sir, I have.

Q Is he the only man you have talked to about this case?

A He is about the onliest one.

Q Haven't you been told, Battle, that if you would give testimony here today that you wouldn't be charged with participation in this riot?

A No, sir, I have not.

Q But you hope that by testifying here today that you won't be charged as a participant in the riot, don't you?

A Sir, I do.

Q You are married, aren't you?

A Sir, I am.

Q And how long have you been married?

A I was married on the 19th of, I believe it was February.

Q Of this year?

A Yes, sir -- no, sir.

Q Last year?

A Sorry to disappoint you, it was this year.

Q You are not disappointing me, Battle. Now, you have had your wife with you here in Seattle?

A I have, sir.

Q Is she still here?

A No, sir, she isn't.

Q Well, up to the night of August 14 and shortly thereafter she was here in Seattle, wasn't she?

A Sir, she was.

Q Now, as I understand your testimony in reply to questions of Colonel Jaworski, you first heard of the fight when you were up at the bus stop?

A Sir, I did.

Q And you were up there at the time meeting your wife?

A Yes, sir.

Q Now, how did you learn about the fight; what called it to your attention when you were at the bus stop?

A On my way from the bus stop, sir.

Q Well, it wasn't while you were up there right at the bus stop then?

A Sir, it wasn't.

Q Well, as a matter of fact, you weren't up at the bus stop meeting your wife either, were you?

A Sir, I was.

Q Hadn't your wife been with you all evening that night?

A Sir, she hadn't.

Q She hadn't been with you all evening?

A No, sir.

Q Do you remember when I talked to you the other day up at Major Manchester's office?

A Sir, I do.

Q And at that time I was present, Captain Noyd here was present, and there was a stenographer present, wasn't there?

A Yes, sir.

Q I will ask you if I didn't ask you the following questions, to which you gave me the answers. (Reading) "Q You had your wife that evening over at the Service Club?" --

A No, sir.

Q Just a moment. Let me read these questions and answers, and my question to you at this time is whether I asked you the questions I am now going to read and whether you made the answers that I am now going to read. (Continuing reading)

"Q You had your wife that evening over at the Service Club?

A No, sir, she came down to the 578th. Q There was a party going on over there that night? A Yes, sir, there was. Q Didn't you have your wife in there? A Yes, sir. " Didn't you so testify?

A I did, sir.

Q Now you say it wasn't right at the bus stop, it was back on the way coming down from the bus stop that you first learned of this fight?

A Yes, sir.

Q And what called it to your attention?

A I heard a lot of noise, sir.

Q Who was with you at the time?

A At the time I was on my way from the bus stop Robert Mathis, Leon Wheeler, and a couple of others, sir. I don't know who they were right now.

Q And you had just taken your wife to the bus stop and the entire party had gone up there, hadn't it, with several other girls?

A Yes, sir.

Q Yes. And you and the other men were coming back down the hill?

A Yes, sir.

Q Did you hear the fight or have any knowledge or information of the fight before you got back down to your Company area?

A Sir, it was only -- I was only half way down there before I heard it.

Q Half way down to where?

A Half way to my Company, sir.

Q You mean half way from the bus stop to your Company area?

A Yes, sir.

Q Well, when you talked to me down there at Major Manchester's office didn't you tell me that you had gotten back to your barracks and that you then heard a lot of noise out in the Company street, as a result of which you went out?

A Sir, I did not.

Q You did not. You are positive you didn't make such a statement?

A Sir, I am.

Q Well, now, tell the Court at this time what you could hear, that is, the first time you heard something unusual going on. Tell the Court what it was you could hear?

A The only thing I could hear, sir, before I got back to my Company was a lot of noise.

Q A lot of noise?

A Yes, sir.

Q And you could hear that noise when you were about half way between the bus stop and your barracks?

A Yes, sir.

Q Who was with you at that time?

A Robert Mathis and Leon Wheeler and a couple more I do not know.

Q And did you have any conversation between you there as to what was going on?

A The only thing, the onliest thing I said, was to Robert Mathis that the boys are cooked up down there tonight; we are moving out. That is all I can remember I said.

Q Well, after you heard the noise did you hurry faster?

A Sir, I did not.

Q Did you go to your barracks?

A I did, sir.

Q You went to your barracks. Did you go inside of your barracks?

A I did, sir.

Q At that time was there any vehicular traffic going back and forth towards the Italian area?

A I wouldn't remember, sir.

Q You don't recall that?

A No, sir.

Q Do you recall seeing the headlights of cars going down towards the Italian area?

A Sir, I cannot.

Q You can't recall that. Well, after you got back down to your barracks about how long did you stay in your barracks?

A Sir, I couldn't tell you exactly how long I stayed in there.

Q Well, were you in there 15 minutes, 20 minutes, you think, or half an hour, or how long?

A I will estimate on about 10 minutes.

Q About 10 minutes.

A Yes sir.

Q Did Mathis -- is that his name?

A Yes, sir.

Q Did he live in the same barracks you did?

A Yes, sir.

Q Did he go in the barracks with you?

A Sir, he did.

Q Did he stay in there about the same length of time you did?

A Sir, I cannot give any account of him after he went into the barracks.

Q Didn't you go in with him?

A Sir, I did.

Q What men did you see in your barracks at that time?

A Sir, I do not remember that.

Q Well, there were a number of men in there, weren't there, Battle?

A Yes, sir, there was a few in there, but I do not know who it was now.

Q You can't recall who they were?

A No, sir.

Q The barracks were lighted, weren't they?

A Yes, sir.

Q Now, you had been with your wife over at the Service Club that night, hadn't you?

A No, sir.

Q Well, the day room?

A No, sir.

Q The 578th mess hall?

A Yes, sir.

Q And that is building 700, isn't it?

A Sir, it is.

Q What time did you and your wife go into the 578th mess hall?

A Sir, I couldn't tell you about what time it was she and I went in there.

Q You haven't any recollection at all of what time it was that evening?

A No, sir, I do not.

Q Well, was it before 9:00 or after 9:00?

A I couldn't say it was before 9:00 and I couldn't say it was after 9:00.

Q How did your wife get there?

A How did she get there? By bus.

Q By bus. Did somebody bring her down to the mess hall -- to the 578th mess hall?

A Sir, I couldn't tell you that.

Q You did not bring her there did you?

A No, sir, I did not.

Q As a matter of fact, you never did meet your wife at the bus stop did you?

A No, sir, I didn't meet her at the bus stop.

Q Did you eat dinner that night or the evening meal on the night of August 14?

A Sir, I can't recall whether I ate or not.

Q You can't recall whether you had dinner that night or not.

A No, sir.

Q Did you have lunch that day?

A Sir, I couldn't say.

Q You couldn't say whether you had lunch that day either?

A No, sir.

Q Did you eat breakfast that day?

A Sir, I can't remember that.

Q You weren't on a diet, were you, Battle?

A No, sir, I was not.

Q Well, the day previous to August 14th was Sunday, wasn't it?

A Sir, would you repeat that?

Q I say the day before this riot was a Sunday, wasn't it?
A No, sir, it was not.

Q It wasn't a Sunday?
A No, sir.

Q You are quite positive of that?
A Yes, sir.

Q You are just as positive of that as you are about all your other testimony?

Trial Judge Advocate: What did you ask? The date of the riot?

Defense: The day before.

Trial Judge Advocate: The day before the riot.

A Sir, the day before the riot?

Q That is what I said.
A Was a Sunday?

Q Yes.
A Sir, it was a Sunday.

Q It was a Sunday?
A Yes.

Q That isn't a day of duty for you, is it?
A Sir, if there was any duty to be carried out, why, it was, sir.

Q Well, suppose you tell us, then, was there any duty on that day for you to carry out?
A Well, sir, you have me right there. I can't tell you whether it was or not.

Q You can't remember what happened on the day before August 14?
A No, sir.

Q You haven't any recollection where you went that day?
A No, sir.

Q No recollection of who you went with?
A No, sir.

Q No recollection of who you might have seen on that day?
A No, sir.

Q But your recollection of August 14th is pretty good, isn't it?
A Sir, it is.

Q Well, let's see just how good it is. Let's come over here

by the map a minute, which is Prosecution Exhibit 2, Battle. Now, you saw Freddie Umblance that night, did you?

A Sir, I did.

Q First show us on Prosecution Exhibit 2 where you saw Freddie Umblance. Show us where you saw Freddie Umblance that night.

A Well, it was along in here, sir (indicating on Prosecution Exhibit 2). I couldn't --

Q You are the man that saw him; you point it out there now. Point out on the map.

A Somewhere along in here (indicating on Prosecution Exhibit 2). I couldn't give you the definite spot where he was.

Q You don't remember just exactly where?

A No.

Q But it was, you say, between building 709 and building 713?

A Yes, sir.

Q Was it closer to 709 or closer to 713?

A Sir, I couldn't say.

Q You couldn't say?

A No, sir.

Q Was it out towards the road?

A Sir, It has been so long I couldn't recall that.

Q Your memory of that evening isn't too good at this time, is that right?

A No, sir.

Q But you are not able to tell us exactly where you saw Freddie Umblance?

A No, sir.

Q Was it close to the orderly room here?

A Sir, I couldn't positively tell you that was closer to here or closer to here (indicating on Prosecution Exhibit 2.)

Law Member: That is, closer to 709 or closer to 713.

Defense: That's right.

Q Was it right between the two buildings or was it out towards the road past the end of them?

A Sir, I wouldn't say.

Q You wouldn't say that?

A No, sir.

Q Well, now, suppose you indicate on there where you were? Where I was?

Q Yes.

A Well, approximately along in here (indicating on Prosecution Exhibit 2).

Q Approximately along in here. Was that in the road?

A Sir, it was.

Q Now, you show me. About here (indicating on Prosecution Exhibit 2)?

A No, I wouldn't say that it was there.

Q Well, you show me where it was. You were down there, you know, Battle; I wasn't.

A No, sir, I know you wasn't down there.

Q Thank you.

A But it was along in this road (indicating on Prosecution Exhibit 2).

Law Member: The Witness pointed then to some place in Lawton Road in the vicinity of building 709.

Defense: Yes.

Q You think it was about right in here where I am indicating some place?

A Sir, I wouldn't say.

Q Well, I don't expect you to give me the exact spot, but I want you to give me your best recollection where it was you were standing?

A Well, that is the best I can give you, sir.

Q Along in the road --

A (Interrupting) I know it wasn't on this side (indicating on Prosecution Exhibit 2).

Q You mean on the orderly room side of 709?

A It wasn't up above here and it wasn't down here (indicating on Prosecution Exhibit 2).

Q And it wasn't over towards 713 or back around to 708.

Trial Judge Advocate: When you say "it wasn't around 713", 713 has lots of around. What he said, he wasn't on this side (indicating on Prosecution Exhibit 2).

Defense: He has already indicated he was in the road in the vicinity of building 709.

Law Member: That's right.

Q Well, I will put a "B" down here, Battle, to show approximately where you were. Is that right?

A Yes, sir.

Q Yes, that is approximately right. Now, about how far were you

from this southwest corner of the orderly room?

Law Member: At the time he saw Umblance, is that it, Major?

Q Well, let me ask him this question, then. During the time you were down in the Italian area and at the time you identified the men that you have identified here today, did you ever vary a great distance either way from the point that has been marked "B"?

A Sir, I don't understand that.

Q Well, I am not surprised. I don't myself. What is the closest you ever got that evening to the southwest corner of building 713?

Trial Judge Advocate: You better point out which is the southwest corner.

Q Yes. This corner here; the southwest corner as shown on Prosecution Exhibit 2. What is the closest you ever got that evening to that southwest corner?

A Sir, I couldn't tell you.

Q You are not able to state?

A No, sir, I am not.

Q Well, now, tell us again approximately where it was that you saw Umblance?

A Well, sir, he was along in here some place (indicating on Prosecution Exhibit 2). I can't recall what place.

Trial Judge Advocate: "Along in here some place" is between 713 and 709, close to the road.

Defense: No, I don't agree he indicated that.

Trial Judge Advocate: All right, show again where it was.

(Witness again indicates as requested.)

Trial Judge Advocate: Close to the road.

Defense: Close to the road between 709 and 713.

Trial Judge Advocate: Yes, sir.

Q You were how far away from Umblance at the time you saw him? Suppose you just pace it off and show us about how far away you were.

A Sir, I am afraid to do that because I might not be telling you the truth.

Q Well, give it to us as near accurate as you can?

A Well, I wouldn't be positive about it, sir.

Q Well, you were down there that evening, weren't you?
A Sir, I was.

Q And you saw Umblance?
A Sir, I did.

Q Now, suppose you just pace off as near as you can, as you remember at this time, about how far away you were from him.
A Sir, I am afraid to do that.

Q Well, you did that for Colonel Jaworski, didn't you?
A No, sir, I did not.

Q Didn't you estimate distances for Colonel Jaworski that you were away?
A No, sir.

Q Before you ever came into this Court Room?
A No, sir, I did not.

Q Well, that is interesting. You didn't estimate any distances at all for Colonel Jaworski?
A No, sir.

Q All right. Now you remember when I talked to you down in Major Manchester's office the other day? You remember that?
A Sir, I do.

Q Didn't I ask you these questions, to which you made those answers: (Reading) "Q Where did you enter the Italian area? A I couldn't exactly show you on this map. I was about 17 paces from the orderly room on the side that had the tent tore down and where the civilian car was setting. Q How did you know it was 17 paces? A When the Colonel questioned me and asked me about how far away was it, could I estimate, he had me step it off in the room." Did you so testify?
A Sir, I did not.

Q You didn't testify that way?
A No, sir.

Q And you are positive of that, Battle?
A I am positive --

Trial Judge Advocate: Will you, in reference to the witness, determine what Colonel he had reference to.

Defense: He has already said you are the only Colonel he ever talked to, the only person. He so testified. I will call it to the Court's recollection. Of course, obviously, I knew he has discussed his testimony with other people; but he has said here this morning -- I asked him and he said he had discussed his testimony with Colonel Jaworski.

Trial Judge Advocate: Now, discussing testimony is one thing and being interviewed, maybe, is another thing in the mind of this witness. If you have no objection to it, I can't see where there is any possible harm, in fairness to the witness and the Court, to ask him what Colonel he has reference to.

Defense: Well, he already denied he testified that way.

Trial Judge Advocate: To me, because that was the inference. You merely said Colonel.

Q You heard the questions and answers I just read you, didn't you, Battle?

A Sir, I did.

Q Now, did you testify that way at the time I questioned you?

A Sir, I did not.

Q You did not testify that way?

A I did not testify that Colonel Jaworski had me to step off 17 paces.

Q Did I say anything in this material I read you about Colonel Jaworski?

Law Member: Well, the reading of the testimony is highly improper unless the Colonel referred to in the testimony is Colonel Jaworski, because that question is asked for the purpose of contradicting this witness' testimony, Major, and your question on direct examination was whether or not this witness had paced off any paces for Colonel Jaworski.

Defense: I followed that up with a further question, if the Court please, and asked him if he had ever paced it off for anybody.

Law Member: I don't remember that, Major.

Defense: I will ask him again.

Q Did you ever step off and make estimates of distances in this case for anyone?

A I did, sir.

Q You did. And who did you do that for?

A I can't think of his first name, but I do know it was Colonel Williams.

Q All right. Then you are able to give estimates and step off distances, are you?

A I couldn't say that I am now.

Q How long ago was it that you did that for Colonel Williams?

A I am not positive.

Q Well, what is your best recollection of how long ago it was?

A Sir, I don't know.

Q You don't know?

A No, sir.

Q Well, suppose you get up and try to give your best recollection of how far you were away at the time you saw Freddie Umblance for this Court. Think you can do that now?

A No, sir, I couldn't say.

Q You couldn't say that now?

A No, sir.

Q How was Freddie Umblance dressed that night?

A How was he dressed?

Q Yes.

A Sir, I can't recall that.

Q You can't recall how he was dressed?

A No, sir.

Q Did he have anything on his head?

A Sir, I do not know.

Q You don't remember?

A No, sir.

Q Well, now, what did Freddie Umblance do during the time you saw him?

A I didn't see him doing anything, sir.

Q Well, was he standing still all of that time?

A Sir, I couldn't positively tell you whether he was standing still or moving about at the time.

Q You don't know whether he was standing still or moving about. You haven't any recollection of that at all?

A No, sir.

Q Now, when you were talking down in Major Manchester's office didn't you tell me at that time that he was coming out and leaving the area?

A Sir, I cannot remember that.

Q You can't remember whether you told me that or not. Now let's go over here to the map again. Where was it that you saw Ceaser?

A Where was it that I saw Ceaser?

Q Yes. You take either map you want, whichever one you think you can locate him best on. (Defense Counsel indicates Prosecution Exhibits 2 and 3.)

A It was on this side of the steps, sir.

Q You mean that he was on the window side of the steps of door E?

A Sir, he was.

Q Well, show us approximately; give us your best recollection of just what position there he was in.

President: There are windows on both sides, Major.

Defense: Well, room Z I thought I said. Maybe I didn't. Well, Counsel and I will agree, I am sure, that he has indicated in the vicinity of the window to room Z.

Trial Judge Advocate: This being the window (indicating on Prosecution Exhibit 3). This is the window and this is the door (indicating on Prosecution Exhibit 3).

Q Well, you have seen this diagram or a similar diagram quite a number of times before, haven't you, Battle?

A I can recall about two or more times.

Q Well, you are quite familiar with the lettering on those doors, are you not?

A No, sir, I am not.

Q Well, haven't you recited door E and door B from the witness stand -- well, strike that last question. Now, suppose you show us just about where you saw Ceaser. You understand that this is the window to room Z here (indicating on Prosecution Exhibit 3)?

A I do, sir.

Q All right.

A About along in here, sir, at the window (indicating on Prosecution Exhibit 3).

Q You think about there?

A I couldn't positively tell you it was there.

Q Well, in this general vicinity here?

A But I do know that he was at the window.

Q Well, let's mark that "B-1" with the understanding Ceaser was around in that general vicinity. Now, what was Ceaser doing?

A Knocking out window panes, sir.

Q He was knocking out window panes?

A Yes, sir.

Q How was Ceaser dressed that evening?

A Sir, I couldn't recall how he was dressed.

Q You couldn't recall how he was dressed?

A No, sir.

Q Did he have anything on his head?

A Sorry, I don't remember that.

Q You have known Ceaser for some time, have you?

A Quite a short while.

Q Is he left or right-handed, do you know?
A Sir, I couldn't tell you that.

Q You don't know that?
A No, sir.

Q You saw him with a stick that evening, did you?
A Yes, sir.

Q Did he have that in his left or right hand?
A Sir, it has been so long I couldn't recall that.

Q You couldn't recall that?
A No, sir.

Q Well, what kind of a stick was it he had?
A Sir, at the present time I could not identify it.

Q Well, was it 24 inches long, or was it 5 feet long, or was it 10 feet long? Give us your best recollection.
A Sir, I cannot.

Q Well, how many windows did you see Ceaser knock out?
A Sir, I couldn't tell you.

Q You couldn't tell me. All right. Do you remember when we talked about Ceaser down in Major Manchester's office?
A I do, sir.

Q I will ask you if I didn't ask you these questions, to which you gave me these answers: (Reading) "Q Who else did you see? A I saw another guy down there; I can't recall his name. Johnnie Ceaser. Q Where did you see him. A I saw him down there, but I didn't see him doing anything." Did you so testify?
A Sir, I must have been frustrated at that time.

Q You think you were probably frustrated at that time?
A It must have been a mis-statement made at the time.

Q I see. Now, Sylvester Campbell. Let's go over and see where it was you saw Sylvester Campbell. Take either map that you want and indicate to us where you saw Sylvester Campbell.
A Sir, he was in this vicinity of --

Q (Interrupting) What vicinity?
A Over here some place (indicating on Prosecution Exhibit 2).

Q Along between barracks 709 and 713, is that right?
A Yes, sir, approximately.

Q Approximately between 709 and 713?
A Yes, sir.

Q What was Sylvester Campbell doing when you saw him?

A Sir, he was not doing anything.

Q Was he standing still?

A Sir, I can't recall that.

Q You can't recall that?

A No, sir, I am afraid to say it.

Q I see. I expect you are.

Trial Judge Advocate: Just a minute. These gratuitous statements that Counsel is making, applying to the witness' answers, they don't constitute questions and I move they be stricken.

Law Member: Don't make those remarks, if you please, Major.

Defense: I am sorry. I ask that they be stricken out.

Q Did Sylvester Campbell have anything in his hand?

A No, sir, he did not when I saw him.

Q He didn't have anything in his hand. And was he going anyplace in particular when you saw him?

A Sir, I am a little bit afraid to say that.

Q Well, you were down there and you saw him, didn't you?

A I did, sir.

Q Well, you just tell the Court at the time you saw him whether he was standing still, whether he was moving around, and if he was moving, just tell the Court in what direction he was moving.

A Well, sir, it has been so long I would be afraid to say that.

Q You don't think you could tell now?

A No, sir.

Q All right. Well, let's go back again to our little conversation we had down in Major Manchester's office. I will ask you again if I didn't ask you these questions, to which you gave me the following answers: (Reading) "Q Well, then, you say you saw Jefferson Green, Lee Dixon, Johnnie Ceaser, Roy Montgomery, Fred Umblance, Sylvester Campbell. Where did you see Campbell? A He was on his way out when I saw him.

Q He was leaving the area? A Yes, sir." Did you so testify? A Sir, I can't recall that. It must have been a mistake made.

Q You don't think you testified that way?

A No, sir. I am not positive.

Q Now, I asked you when we were talking down there in Major Manchester's office to give me the names of every person you saw down there in that Italian area that night, didn't I?

A You did so, sir.

Q Did you ever mention the name of Ernest Graham to me at that time?

A Sir, I cannot remember mentioning that name to you because at first, beginning, you did not ask me about anything like that.

Q Let's go over here to the map again and I want you to tell the Court just where it was you saw Ernest Graham. Will you come over here and show us where it was you saw Ernest Graham?

A Sir, I am sure he was in the area but I couldn't show you the exact spot that he was.

Q You don't have any recollection of where it was that you saw Ernest Graham?

A I do not, sir.

Q All right. You were able to tell on direct examination pretty well where you saw him, weren't you?

A Sir, I am afraid to say that.

Q Well, when Colonel Jaworski was questioning you here a few moments ago, didn't you tell Colonel Jaworski where it was you saw Ernest Graham?

A Sir, so much passed through my head since then I do not remember.

Q You can't tell where it was. Well, about how far were you from Ernest Graham when you saw him?

A Sir, on that I would be afraid to tell you about how far it was I was from him.

Q Were you close to him like you are to me now, or was he as far away as the wall over here, or don't you remember?

A I am not positive which one that was.

Q Do you remember how Ernest Graham was dressed?

A Sir, I do not.

Q Battle, did you see John R. Brown down there that evening?

A John R. Brown? I saw somebody resembling him. I am not positive it was him.

Q But you told the Investigating Officers, and you told Colonel Jaworski, and you told Colonel Williams that you saw John R. Brown down there that night, didn't you?

A I told him, sir, that I wasn't positive about it.

Q Well, as a matter of fact, John R. Brown was AWOL in town that night, wasn't he?

A I don't know that, sir.

Q Battle, as a matter of fact, you were never down there yourself that night, were you?

A Sir, I was.

Q You were.

Defense: That is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Private Battle, --

A Yes, sir.

Q (Continuing) Major Beeks asked you some questions about having stepped off distances.

A Yes, sir.

Q I will ask you whether or not you at any time stepped off more than one distance for anyone? I mean, prior to requests that were made today in this Court-Martial Hearing.

A You mean, did I step off --

Q Distances in connection with the things you saw down at Fort Lawton that evening.

A You mean, did I step off more than one?

Q Yes.

A No, sir, I did not.

Q And for whom did you step off that one distance?

A Colonel Williams, sir.

Q Did you or not at any time step off any distances for me?

A Sir, I did not.

Q These men whom you have identified to the Court today, will you tell the Court whether you are positive or whether you are uncertain, or what conviction or feeling you have as to whether you saw each of those men in the Italian area on the occasion in question?

Defense: Objected to as improper redirect examination.

Law Member: Overruled.

Q Will you answer the question.

A Sir, would you mind repeating that again.

(Question read by reporter.)

A Well, sir, we had two men that I wasn't positive about.

Q Who were those two men?

A Brown. I wasn't positive about him.

Q You weren't positive of Brown. Who was the other one you weren't positive of?

A Johnnie Ceaser, I believe it was sir.

Q Johnnie Ceaser. All right. Any others you weren't positive of?

A I can't remember, sir.

Q Were you positive of all the rest that you have identified today or are you not positive of all the rest you identified -- those you picked out and pointed to?

A Sir, I am.

Q Is there any question in your mind about your having seen those men in the Italian area on the occasion in question?

A There is not, sir.

Defense: I think the last question was leading. I, therefore, object to the question and move to strike the answer. The answer is put right in the witness' mouth.

Law Member: Well, the answer was in 20 seconds before you got up. What was the question, please?

Trial Judge Advocate: I asked him if there was any question in his mind.

Law Member: Overruled.

Q Now, Major Beeks asked you whether you had dinner or supper or breakfast on August 14th. State whether or not you are able to tell the Court whether you had breakfast or whether you had dinner or whether you had supper on August 16, 1944?

A Sir, I am not able to state that.

Q Can you pick out any particular date in August and state with certainty as to whether or not you had breakfast or dinner or supper that day?

A Sir, I cannot.

Trial Judge Advocate: That is all the questions we have, if it please the Court.

President: Is there any recross-examination?

Defense: Just a moment, if the Court please. No, that is all.

EXAMINATION BY THE COURT

Questions by President:

Q Private Battle, do you often go without meals?

A Quite often, sir.

Q How well do you know T-5 Curry?

A I know him pretty well, sir.

Q How long have you known him?
A Better than a year, sir.

Q What?
A Better than a year, sir.

Q Is he in the same organization as you, same Company?
A He was at that time, sir.

Q All right. How long have you known Umblance?
A Better than a year, sir.

Q How well do you know him?
A I know him pretty well, sir.

Q Go around together?
A No, sir, I can't recall he and I going out together.

Q Are you in the same organization, same Company? Was he in your Company at that time?
A No, sir, he was not.

Q Had he been in your Company at any time?
A Yes, sir.

Q How long ago?
A Sir, I can't tell you exactly how long ago it was.

Q How long was he in the same Company with you?
A I beg your pardon, sir?

Q How long was he in the same Company with you?
A I didn't understand you.

Q How many months, how many weeks, was Umblance in the same Company with you?
A Sir, I wouldn't be able to state how long it was.

Q Well, was it a couple of days or was it a longer time than that?
A It was a longer time than that.

Q Well, was it a longer time than a couple of weeks?
A It was, sir.

Q A couple of months, a month?
A I imagine it was, sir.

Q Where were you when you were in the same Company with Umblance?
A At the 275th, Camp George Jordan, sir.

Q How long have you known James Chandler?
A Sir, I imagine about a month and better.

Q About a month?
A Yes, sir.

Q That was before the riot you knew him a month?
A No, sir, I knew him about three or four days before the riot.

Q Three or four days before the riot. How did you come to know him?
A Just by seeing him pass through my Company.

Q Was he in your Company?
A No, sir, he used to pass through there.

Q Did you know him by name before that time?
A Sir, I did not.

Q How long have you known Johnnie Ceaser?
A As long as I have known Johnnie Ceaser, sir, has been about -- I have known him by face for a pretty good while, sir.

Q You knew his face?
A Yes.

Q Did you know him by name before August 14?
A I did not, sir.

Q How long have you known Johnnie Green?
Trial Judge Advocate: Jefferson Green.

Q Jefferson Green. I am sorry.
A I have learned his name since we have been in the stockade, sir.

Q Had you seen him before the riot ever?
A Several times, sir.

Q How long had you known Sylvester Campbell?
A I have known him ever since I have been in the Company that I was transferred to.

Q How long was that?
A Sir, I can't recall the date that I was transferred.

Q Was it a month, two months, three months? Approximately.
A Approximately two months.

Q That was two months before August 14?
A Sir, it was.

Q Was he in the same Company with you that two months?
A He was, sir.

Q How long have you known Herman Johnson?
A Ever since I have been in the Company.

Q The same as Campbell?
A Yes, sir, that's right.

Q And how long have you known Sergeant Ernest Graham?
A The same, sir.

Q He was in the same Company?
A Yes, sir.

President: Any further questions?

Major Crocker: I have a question.

Questions by Major Crocker:

Q Private Battle, is there any doubt in your mind as to whether or not you saw Johnnie Ceaser that night?
A No, sir, there is not.

Q Well, I understood you to say in answer to a question by Major Beeks that there had been some doubt in your mind about that at one time. Do you remember saying that in answer to a question of his?
A No, sir, I do not.

Q Well, was there ever any doubt in your mind about seeing Ceaser?
A No, sir, there was not.

Q And will you say again what he was doing when you saw him?
A Breaking out window panes, sir.

Q You are positive it was Ceaser and not some other man?
A Yes, sir, it was Ceaser.

Q Was there a light in that window?
A Sir, there was one in the back.

Q What do you mean in the back?
A In the back of the orderly room, sir.

Q Was there a light in the room, that is, room Z, at that time?
A I don't remember that, sir.

Major Crocker: No further questions.

President: Any further questions?

Questions by Major Carpenter:

Q I would like to ask if at any time you eat meals away from the Company; such as in the PX?
A No, sir, I never did go over to the PX and eat.

Q You don't eat meals at any other place than at the Company?
A Just in the Company when I was in the Battalion area.

Major Carpenter: That is all.

Questions by Major MacLennan:

Q Private Battle, you testified that James Chandler was on the left side of door E with a small club in his hand, and you estimated it to be about 18 inches in length. Do you recall that?

A Sir, I do.

Q What sort of a club was that?

A Sir, I don't exactly know what size club it was.

Q Was it an MP club by any chance?

A No, sir, it was not.

Major MacLennan: Thank you.

President: Any further questions? Any questions by the Prosecution?

Trial Judge Advocate: No, sir.

President: And none by the Defense?

Defense: No questions.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

President: The Court will recess, to reconvene at 1:30 p.m.

The Court thereupon recessed at 12:00 noon, 24 November 1944.